

State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2227/1

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2005 BILL

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1 AN ACT *to amend* 59.40 (2) (f), 66.0901 (2), 703.22 (title), 703.22 (2), 703.22 (3),
2 779.01 (2) (a), 779.01 (3), 779.01 (5), 779.02 (1) (c), 779.02 (1) (e), 779.02 (2) (a),
3 779.02 (2) (b), 779.02 (2) (c), 779.02 (2) (e), 779.02 (3), 779.02 (5), 779.03 (1),
4 779.035 (1), 779.035 (2) (b) 1., 779.035 (2) (b) 2. a., 779.035 (3), 779.036 (1),
5 779.036 (2), 779.036 (3), 779.036 (4) (a), 779.05 (1), 779.06 (1), 779.06 (2), 779.06
6 (3), 779.07 (1) (d), 779.08 (1), 779.08 (2), 779.10, 779.135 (1), 779.14 (1) (a),
7 779.14 (1) (b), 779.14 (1e) (a), 779.14 (1e) (b), 779.14 (1m) (c) (intro.), 779.14 (1m)
8 (d) (intro.), 779.14 (1m) (e) 2. b., 779.14 (2) (a) 2., 779.14 (2) (a) 3., 779.14 (2) (am)
9 1., 779.14 (2) (am) 2. a., 779.14 (3), 779.15 (1), 779.15 (2), 779.15 (3), 779.15 (4)
10 (a) and 779.16; and *to create* 779.01 (2) (e) of the statutes; **relating to:**
11 construction liens, requirements for securing payment for work on publicly
12 financed projects, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law allows persons (such as prime contractors, subcontractors, and suppliers) who do work or furnish materials for improvements to real estate to file

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liens on the real estate to secure their right to payment. These liens are generally referred to as "construction liens." Under current law, construction liens are available on projects that do not involve public financing. Current law imposes different requirements for securing payment for work performed or materials furnished for projects that are publicly financed.

This bill makes the following changes to construction liens and the requirements that apply to publicly financed projects:

Repairs and remodeling. Under current law, a person may claim a construction lien for an "improvement" to real estate, which is defined as any building, structure, erection, demolition, alteration, excavation, filling, grading, tiling, planting, or landscaping that is done on or to land for its permanent benefit. This bill expands the definition to also include repairing or remodeling that is done on or to land for its benefit. The bill also eliminates the requirement that an improvement must be for the permanent benefit of the land.

Construction liens for specified materials. The requirements under current law for publicly financed projects apply to persons who furnish material used or consumed in making a publicly financed improvement, including any of the following: fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's compensation insurance, and contributions for unemployment insurance. ~~Under current law, construction liens may be claimed for materials furnished for improving land, but current law does not specify the foregoing materials. This bill specifies that a construction lien may be claimed for the foregoing materials that are used or consumed for an improvement to real estate.~~

Plans and specifications. Current law allows a person to claim a construction lien for labor that the person performs, or materials, plans, or specifications, that the person provides, for an improvement to real estate. However, in referring to labor and materials, current law does not consistently also refer to plans and specifications. This bill corrects the references to refer to plans and specifications. The bill also amends the requirements regarding publicly financed projects so that they consistently refer to plans and specifications, as well as labor and materials.

Sixty-day and ten-day notices. Under current law, a subcontractor or supplier who works or furnishes material for certain improvements to real estate is not allowed to make a claim for a construction lien unless, within 60 days after first performing work or furnishing material for the project, the subcontractor or supplier has provided the owner of the real estate a notice specified under current law. The improvements that this notice requirement applies to are the following: 1) a wholly residential improvement in which four or less family living units are provided or added; and 2) a partly or wholly nonresidential improvement in which 10,000 or less total usable square feet are provided or added. A prime contractor must also give a notice to the owner in order to claim a construction lien for the foregoing types of improvements. If the contractor does not include the notice in the contract with the owner, the prime contractor must provide the notice within ten days after labor or

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materials are furnished. If the prime contractor does not provide the notice, the prime contractor may claim a construction lien only if certain other requirements are satisfied.

Under the bill, for a wholly residential improvement described above, a subcontractor or supplier must provide the 60-day notice and the prime contractor must provide the ten-day notice. However, notice by a subcontractor, supplier, or prime contractor is not required for any wholly or partly nonresidential improvement, regardless of the square footage of usable floor space that is added or provided.

In addition, under the bill, if a ten-day notice is required and the prime contractor does not provide the notice, the prime contractor may claim a construction lien, but only if the prime contractor's subcontractors and suppliers have been paid and none of the prime contractor's subcontractors or suppliers have provided the 60-day notice to the owner. Current law also allows a prime contractor to claim a construction lien under these circumstances, except that current law refers to subcontractors and suppliers, rather than specifically referring to the prime contractor's subcontractors and suppliers.

Service of notice. Current law contains various notice requirements for construction liens and publicly financed projects. Under this bill, any duty to provide notice regarding a construction lien or a publicly financed project may be accomplished by serving the notice on a party in any of the following ways: 1) by personal delivery; 2) by registered or certified mail; 3) in the same manner that is required under current law for service of a summons in circuit court; or 4) by any other means of delivery in which the party receiving the notice makes written confirmation of the delivery.

Other changes. The bill makes other changes, including the following:

1. Under current law, a person may not bring an action to enforce a construction lien on real estate unless, within six months from the date the person last performed work or furnished materials, the person files a claim for the lien with the circuit court. This bill requires a person to serve a copy of the claim on the owner of the real estate within 30 days after filing the claim with the circuit court.

2. Under current law, under certain circumstances, an owner of real estate or other interested party may release a construction lien from the real estate by substituting two sureties for the lien. This bill requires only one surety.

3. Under current law, prime contractors and subcontractors on both privately and publicly financed projects must hold certain moneys in trust for the payment of claims for labor and materials. Failure to comply with this requirement is theft. Under this bill, if the prime contractor or subcontractor is a business entity, specified individuals who represent the entity may also be guilty of theft.

4. Current law allows a prime contractor on a publicly financed project to dispute a claim for payment by a subcontractor or supplier. If the prime contractor disputes the claim, the prime contractor must provide written notice of the dispute to the governmental body contracting for the work. This bill requires the prime contractor also to provide written notice of the dispute to the subcontractor or supplier.

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5. Under current law, persons who supply material for an improvement are referred to as suppliers, materialmen, or material suppliers. Under this bill, such persons are consistently referred to as "suppliers."

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.40 (2) (f) of the statutes is amended to read:

59.40 (2) (f) Keep a judgment and lien docket of all claims for liens filed by contractors, subcontractors, ~~materialmen~~ suppliers, and laborers and all claims filed for log, mining, and maintenance liens.

SECTION 2. 66.0901 (2) of the statutes is amended to read:

66.0901 (2) BIDDER'S PROOF OF RESPONSIBILITY. A municipality intending to enter into a public contract may, before delivering any form for bid proposals, plans, and specifications to any person, except ~~materialmen~~, suppliers, and others not intending to submit a direct bid, require the person to submit a full and complete statement sworn to before an officer authorized by law to administer oaths. The statement shall consist of information relating to financial ability, equipment, experience in the work prescribed in the public contract, and other matters that the municipality requires for the protection and welfare of the public in the performance of a public contract. The statement shall be in writing on a standard form of a questionnaire that is adopted and furnished by the municipality. The statement shall be filed in the manner and place designated by the municipality. The statement shall not be received less than 5 days prior to the time set for the opening of bids.

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1 The contents of the statement shall be confidential and may not be disclosed except
2 upon the written order of the person furnishing the statement, for necessary use by
3 the public body in qualifying the person, or in cases of actions against, or by, the
4 person or municipality. The governing body of the municipality or the committee,
5 board, or employee charged with, or delegated by the governing body with, the duty
6 of receiving bids and awarding contracts shall properly evaluate the statement and
7 shall find the maker of the statement either qualified or unqualified. This subsection
8 does not apply to a 1st class city.

9 **SECTION 3.** 703.22 (title) of the statutes is amended to read:

10 **703.22 (title) Mechanics' and ~~materialmen's~~ suppliers' liens.**

11 **SECTION 4.** 703.22 (2) of the statutes is amended to read:

12 703.22 (2) Any mechanics' lien or ~~materialmen's~~ suppliers' lien arising as a
13 result of repairs to or improvements of a unit by a unit owner shall be a lien only
14 against the unit.

15 **SECTION 5.** 703.22 (3) of the statutes is amended to read:

16 703.22 (3) Any mechanics' or ~~materialmen's~~ suppliers' lien arising as a result
17 of repairs to or improvements of the common elements, if authorized in writing by
18 the association, shall be paid by the association as a common expense and until paid
19 shall be a lien against each unit in proportion to its percentage interest in the
20 common elements. On payment of the proportionate amount by any unit owner to
21 the lienor or on the filing of a written undertaking in the manner specified by s.
22 779.08, the unit owner shall be entitled to a release of his or her unit from the lien
23 and the association shall not be entitled to assess his or her unit for payment of the
24 remaining amount due for the repairs or improvements.

25 **SECTION 6.** 779.01 (2) (a) of the statutes is amended to read:

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1 779.01 (2) (a) "Improve" or "improvement" includes any building, structure,
2 erection, fixture, demolition, alteration, excavation, filling, grading, tiling, planting,
3 clearing ~~or~~, landscaping, repairing, or remodeling which is built, erected, made or
4 done on or to land for its permanent benefit. This enumeration is intended as an
5 extension rather than a limitation of the normal meaning and scope of "improve" and
6 "improvement".

7 SECTION 7. 779.01 (2) (e) of the statutes is created to read:

8 779.01 (2) (e) "Serve" or "served" means personal delivery, delivery by
9 registered or certified mail, service in a manner described for service of a summons
10 under s. ~~801.11~~ 801.14, or any other means of delivery in which the recipient makes written
11 confirmation of the delivery.

12 SECTION 8. 779.01 (3) of the statutes is amended to read:

13 779.01 (3) EXTENT AND CHARACTER OF LIEN. ^{Any} Every person who performs any work
14 or procures its performance or furnishes any labor ~~or~~, materials ~~or~~, plans, or
15 specifications, used or consumed for the improvement of land, including fuel, lumber,
16 building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus,
17 tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil,
18 greases, state imposed taxes, premiums for worker's compensation insurance, and
19 contributions for unemployment insurance, and who complies with s. 779.02, shall
20 have a lien therefor on all interests in the land belonging to its owners. The lien
21 extends to all contiguous land of the owner, but if the improvement is located wholly
22 on one or more platted lots belonging to the owner, the lien applies only to the lots
23 on which the improvement is located.

24 SECTION 9. 779.01 (5) of the statutes is amended to read:

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1 779.01 (5) ASSIGNMENT OF LIEN, GARNISHMENT. Assignment of a claim or right
2 to a lien or any part thereof by a prime contractor, or garnishment by the creditor of
3 a prime contractor, subcontractor, ~~materialman~~ supplier, laborer or mechanic, shall
4 not operate to compel the owner, prime contractor, subcontractor or ~~materialman~~
5 supplier to pay the assignee or creditor until the lien claims of subcontractors,
6 ~~materialmen~~ suppliers, and laborers under this subchapter have either been paid in
7 full, matured by notice and filing or expired. If such claims become liens, the owner,
8 prime contractor, subcontractor or ~~materialman~~ supplier shall be compelled to pay
9 such assignee or creditor only what remains due in excess of such liens.

10 SECTION 10. 779.02 (1) (c) of the statutes is amended to read:

11 779.02 (1) (c) By any lien claimant furnishing labor ~~or~~, materials, plans, or
12 specifications for an improvement in any case where more than 4 family living units
13 are to be provided or added by such work of improvement, if the improvement is
14 wholly residential in character, or in any case where ~~more than 10,000 total usable~~
15 ~~square feet of floor space is to be provided or added by such work of improvement,~~
16 if the improvement is partly or wholly nonresidential in character.

17 SECTION 11. 779.02 (1) (e) of the statutes is amended to read:

18 779.02 (1) (e) By any lien claimant, other than a prime contractor, who
19 furnishes labor ~~or~~, materials, plans, or specifications for an improvement on a project
20 on which the prime contractor is not required to give notice under this section.

21 SECTION 12. 779.02 (2) (a) of the statutes is amended to read:

22 779.02 (2) (a) Every prime contractor who enters into a contract with the owner
23 for a work of improvement on the owner's land and who has contracted or will
24 contract with any subcontractors or ~~materialmen~~ suppliers to provide labor ~~or~~,
25 materials, plans, or specifications for the work of improvement shall include in any

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1 written contract with the owner the notice required by this paragraph, and shall
2 provide the owner with a copy of the written contract. If no written contract for the
3 work of improvement is entered into, the notice shall be prepared separately and
4 served ~~personally or by registered mail~~ on the owner or authorized agent within 10
5 days after the first labor ~~or~~, materials, plans, or specifications are furnished for the
6 improvement by or pursuant to the authority of the prime contractor. The notice,
7 whether included in a written contract or separately given, shall be in at least
8 8-point bold type, if printed, or in capital letters, if typewritten. It shall be in
9 substantially the following language: "As required by the Wisconsin construction
10 lien law, ~~builder~~ ^{Strike} claimant hereby notifies owner that persons or companies furnishing labor
11 ~~or~~, materials, plans, or specifications for the construction on owner's land may have
12 lien rights on owner's land and buildings if not paid. Those entitled to lien rights,
13 in addition to the undersigned ~~builder~~ ^{Strike} claimant, are those who contract directly with the owner
14 or those who give the owner notice within 60 days after they first furnish labor ~~or~~,
15 materials, plans, or specifications for the construction. Accordingly, owner probably
16 will receive notices from those who furnish labor ~~or~~, materials, plans, or
17 specifications for the construction, and should give a copy of each notice received to
18 the mortgage lender, if any. ~~Builder~~ ^{Strike} claimant agrees to cooperate with the owner and the
19 owner's lender, if any, to see that all potential lien claimants are duly paid".

20 SECTION 13. 779.02 (2) (b) of the statutes is amended to read:

21 779.02 (2) (b) Every person other than a prime contractor who furnishes labor
22 ~~or~~, materials, plans, or specifications for an improvement shall have the lien and
23 remedy under this subchapter only if within 60 days after furnishing the first labor
24 ~~or~~, materials, plans, or specifications the person ~~gives~~ serves a written notice ~~in~~
25 ~~writing~~, in 2 signed copies, ~~to the owner either by personal service on the owner or~~

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1 authorized agent ~~or by registered mail with return receipt requested to the owner or~~
2 ~~authorized agent at the last known post office address.~~ The owner or agent shall
3 provide a copy of the notice received, within 10 days after receipt, to any mortgage
4 lender who is furnishing or is to furnish funds for construction of the improvement
5 to which the notice relates. The notice to the owner shall be in substantially the
6 following language, with blanks accurately filled in: "As a part of your construction
7 contract, your contractor or ~~builder~~ ^{claimant} has already advised you that those who furnish
8 labor ~~or~~, materials, plans, or specifications for the work will be notifying you. The
9 undersigned first furnished labor ~~or~~, materials, plans, or specifications on (give
10 date) for the improvement now under construction on your real estate at (give
11 legal description, street address or other clear description). Please give your
12 mortgage lender the extra copy of this notice within 10 days after you receive this,
13 so your lender, too, will know that the undersigned is included in the job".

SECTION 14. 779.02 (2) (c) of the statutes is amended to read:

15 779.02 (2) (c) If any ^{the prime} prime contractor required to give the notice prescribed in
16 par. (a) fails to give notice as required, ~~such~~ contractor does not have the lien and
17 remedy provided by this subchapter unless the ^{prime} contractor pays all of the ^{prime} contractor's
18 obligations to its subcontractors and ~~materialmen~~ suppliers in respect to the work
19 of improvement within the time periods under s. 779.06 and until the time for notice
20 under par. (b) has elapsed and ~~no lien claimant~~ none of its subcontractors or suppliers
21 gives notice as a lien claimant under par. (b) ~~gives notice~~.

SECTION 15. 779.02 (2) (e) of the statutes is amended to read:

23 779.02 (2) (e) If the owner or lender complains of any insufficiency of any notice,
24 the burden of proof is upon the owner or lender to show that he or she has been misled
25 or deceived by the insufficiency. If there is more than one owner, giving the notice

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1 required to any one owner or authorized agent is sufficient. In addition, every prime
2 contractor and subcontractor, at the time of purchasing or contracting for any
3 materials to be used in any of the cases enumerated in s. 779.01, shall upon request
4 deliver to the ~~materialman~~ supplier a description of the real estate upon which the
5 materials are to be used and the name and post-office address of the owner and
6 authorized agent, if any. Failure to receive such description and name and address
7 does not relieve a ~~materialman~~ supplier who asserts a lien from the requirement of
8 giving timely notice.

9 **SECTION 16.** 779.02 (3) of the statutes is amended to read:

10 779.02 (3) FAILURE TO GIVE NOTICE; SAVING CLAUSE. Any lien claimant, other than
11 the prime contractor, who fails to give a notice as required by sub. (2) (b) shall have
12 no lien on the land or improvement to which the failure relates. Any claimant who
13 serves a late but otherwise proper notice ~~personally or by registered mail~~ on the
14 owner or authorized agent shall have the lien provided by s. 779.01 for any labor ~~or~~,
15 materials, plans, or specifications furnished after the late notice is actually received
16 by the owner. The burden of proving that labor ~~or~~, materials, plans, or specifications
17 for which a lien is claimed were furnished after that date is on the lien claimant.

18 **SECTION 17.** 779.02 (5) of the statutes is amended to read:

19 779.02 (5) THEFT BY CONTRACTORS. The proceeds of any mortgage on land paid
20 to any prime contractor or any subcontractor for improvements upon the mortgaged
21 premises, and all moneys paid to any prime contractor or subcontractor by any owner
22 for improvements, constitute a trust fund only in the hands of the prime contractor
23 or subcontractor to the amount of all claims due or to become due or owing from the
24 prime contractor or subcontractor for labor ~~and~~, materials, plans, and specifications
25 used for the improvements, until all the claims have been paid, and shall not be a

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1 trust fund in the hands of any other person. The use of any such moneys by any prime
2 contractor or subcontractor for any other purpose until all claims, except those which
3 are the subject of a bona fide dispute and then only to the extent of the amount
4 actually in dispute, have been paid in full or proportionally in cases of a deficiency,
5 is theft by the prime contractor or subcontractor of moneys so misappropriated and
6 is punishable under s. 943.20. If the prime contractor or subcontractor is a
7 corporation, limited liability company, or other legal entity other than a sole
8 proprietorship, such misappropriation also shall be deemed theft by any officers,
9 directors ~~or, members, partners, or agents of the corporation~~ responsible for the
10 misappropriation. Any of such misappropriated moneys which have been received
11 as salary, dividend, loan repayment, capital distribution or otherwise by any
12 shareholder ~~of the corporation, member, or partner~~ not responsible for the
13 misappropriation shall be a civil liability of ~~the shareholder~~ that person and may be
14 recovered and restored to the trust fund specified in this subsection by action brought
15 by any interested party for that purpose. Except as provided in this subsection, this
16 section does not create a civil cause of action against any ~~other person~~ other than the
17 prime contractor or subcontractor to whom such moneys are paid. Until all claims
18 are paid in full, have matured by notice and filing or have expired, such proceeds and
19 moneys shall not be subject to garnishment, execution, levy or attachment.

20 **SECTION 18.** 779.03 (1) of the statutes is amended to read:

21 779.03 (1) NO AGREEMENT BY OTHER THAN CLAIMANT MAY INVALIDATE LIEN. Subject
22 to s. 779.05, a lien claimant may waive the lien given by s. 779.01 by a writing signed
23 by the lien claimant, but no action by nor agreement between any other persons shall
24 invalidate the lien, other than payment in full to the claimant for the labor ~~or,~~
25 materials, plans, or specifications to which the lien claim relates.

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1 **SECTION 19.** 779.035 (1) of the statutes is amended to read:

2 779.035 (1) To eliminate lien rights as provided in s. 779.03 (2), the contract
3 between the owner and the prime contractor for the construction of the improvement
4 shall contain a provision for the payment by the prime contractor of all claims for
5 labor performed and materials ~~or~~, plans, or specifications furnished, used or
6 consumed, except plans or specifications furnished by the architect, professional
7 engineer or surveyor employed by the owner, in making such improvement and
8 performing the work of improvement. The contract shall not be effective to eliminate
9 lien rights unless the prime contractor gives a bond issued by a surety company
10 licensed to do business in this state. The bond shall carry a penalty for unpaid claims
11 of not less than the contract price, and shall be conditioned for the payment to every
12 person entitled thereto of all the claims for labor performed, and materials, plans,
13 or specifications furnished under the contract and subsequent amendments thereto,
14 to be used or consumed in making the improvement or performing the work of
15 improvement as provided in the contract and subsequent amendments thereto. The
16 bond shall be approved by the owner and by any mortgage lender furnishing funds
17 for the construction of the improvement. No assignment, modification or change in
18 the contract, or change in the work covered thereby, or any extension of time for
19 completion of the contract shall release the sureties on the bond.

20 **SECTION 20.** 779.035 (2) (b) 1. of the statutes is amended to read:

21 779.035 (2) (b) 1. Except as provided in subd. 2., a subcontractor or supplier
22 may maintain an action under par. (a) only if the subcontractor or supplier has
23 notified the prime contractor in writing that the subcontractor or supplier was
24 providing labor ~~or~~, materials, plans, or specifications for the construction of the
25 improvement. The notice must be provided no later than 60 days after the date on

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1 which the subcontractor or supplier first provided the labor or, materials, plans, or
2 specifications.

3 **SECTION 21.** 779.035 (2) (b) 2. a. of the statutes is amended to read:

4 779.035 (2) (b) 2. a. The contract for the provision of the labor or, materials,
5 plans, or specifications does not exceed \$5,000.

6 **SECTION 22.** 779.035 (3) of the statutes is amended to read:

7 779.035 (3) In any case in which the improvement contract and bond have been
8 prepared and executed pursuant to sub. (1) upon inquiry by any subcontractor,
9 ~~materialman~~ supplier, laborer or mechanic furnishing labor or, materials, plans, or
10 specifications for said improvement, the prime contractor and the owner shall so
11 advise the person making the inquiry and shall give the person reasonable
12 opportunity to inspect and examine the contract and bond.

13 **SECTION 23.** 779.036 (1) of the statutes is amended to read:

14 779.036 (1) In any case in which an improvement is constructed or to be
15 constructed pursuant to a contract and payment bond under s. 779.035, any person
16 furnishing labor or materials or plans or specifications to be used or consumed in
17 making the improvement, to any prime contractor or subcontractor shall have a lien
18 on the money or other payment due or to become due the prime contractor or
19 subcontractor therefor, if the lienor, before payment is made to the prime contractor
20 or subcontractor, ~~gives~~ serves a written notice of the lienor's claim ~~by registered mail~~
21 ~~with return receipt requested to~~ on the owner or authorized agent and ~~to~~ on any
22 mortgage lender furnishing funds for the construction of the improvement. Upon
23 receipt of the notice, the owner and lender shall assure that a sufficient amount is
24 withheld to pay the claim and, when it is admitted by the prime contractor or
25 subcontractor involved or established under sub. (3), shall pay the claim and charge

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1 it to the prime contractor or subcontractor as appropriate. Any owner or lender
2 violating this duty shall be liable to the claimant for the damages resulting from the
3 violation. There shall be no preference among lienors serving such notices.

4 **SECTION 24.** 779.036 (2) of the statutes is amended to read:

5 779.036 (2) A copy of the notice provided in sub. (1) also shall be served by the
6 lienor, within 7 days after service of the notice upon the owner and lender, upon the
7 prime contractor or subcontractor ~~by registered mail with return receipt requested.~~

8 **SECTION 25.** 779.036 (3) of the statutes is amended to read:

9 779.036 (3) If the prime contractor or subcontractor does not dispute the claim
10 within 30 days after service of written notice under sub. (2), ~~by registered mail with~~
11 ~~return receipt requested to the owner and lender,~~ the amount claimed shall be paid
12 over to the claimant on demand and charged to the prime contractor or subcontractor
13 pursuant to sub. (1). If the prime contractor or subcontractor disputes the claim, the
14 right to a lien and to the moneys in question shall be determined in an action brought
15 by the claimant or the prime contractor or subcontractor. If the action is not brought
16 within 3 months from the time the notice required by sub. (1) is served, the lien rights
17 under this section are barred.

18 **SECTION 26.** 779.036 (4) (a) of the statutes is amended to read:

19 779.036 (4) (a) When the total lien claims exceed the sum due the prime
20 contractor or subcontractor concerned and where the prime contractor or
21 subcontractor has not disputed the amounts of the claims filed, the owner with the
22 concurrence of the lender shall determine on a proportional basis who is entitled to
23 the amount being withheld and shall ~~notify~~ serve a written notice of the
24 determination on all claimants and the prime contractor or subcontractor ~~in writing~~
25 ~~of the determination.~~ Unless an action is commenced by a claimant or by the prime

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1 contractor or subcontractor within 20 days after the mailing service of said notice,
2 the money shall be paid out in accordance with the determination and the liability
3 of the owner and lender to any claimant shall cease.

4 **SECTION 27.** 779.05 (1) of the statutes is amended to read:

5 779.05 (1) Any document signed by a lien claimant or potential claimant and
6 purporting to be a waiver of construction lien rights under this subchapter, is valid
7 and binding as a waiver whether or not consideration was paid therefor and whether
8 the document was signed before or after the labor ~~or material~~ was, or materials,
9 plans, or specifications were furnished or contracted for. Any ambiguity in such
10 document shall be construed against the person signing it. Any waiver document
11 shall be deemed to waive all lien rights of the signer for all labor ~~and,~~ materials,
12 plans, and specifications furnished or to be furnished by the claimant at any time for
13 the improvement to which the waiver relates, except to the extent that the document
14 specifically and expressly limits the waiver to apply to a particular portion of such
15 labor ~~and,~~ materials, plans, and specifications. A lien claimant or potential lien
16 claimant of whom a waiver is requested is entitled to refuse to furnish a waiver
17 unless paid in full for the work ~~or material,~~ materials, plans, or specifications to
18 which the waiver relates. A waiver furnished is a waiver of lien rights only, and not
19 of any contract rights of the claimant otherwise existing.

20 **SECTION 28.** 779.06 (1) of the statutes is amended to read:

21 779.06 (1) No lien under s. 779.01 shall exist and no action to enforce a lien
22 under s. 779.01 shall be maintained unless within 6 months from the date the lien
23 claimant furnished the last labor ~~or,~~ materials, plans, or specifications, a claim for
24 the lien is filed in the office of the clerk of circuit court of the county in which the lands
25 affected by the lien lie, and unless within 2 years from the date of filing a claim for

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1 lien an action is brought and summons and complaint filed. A lien claimant shall
2 serve a copy of the claim for lien on the owner of the property on which the lien is
3 placed within 30 days after filing the claim. A claim for a lien may be filed and
4 entered in the judgment and lien docket, and action brought, notwithstanding the
5 death of the owner of the property affected by the action or of the person with whom
6 the original contract was made, with like effect as if he or she were then living.

7 **SECTION 29.** 779.06 (2) of the statutes is amended to read:

8 779.06 (2) No lien claim may be filed or action brought thereon unless, at least
9 30 days before timely filing of the lien claim, the lien claimant serves on the owner,
10 ~~personally or by registered mail with return receipt requested,~~ a written notice of
11 intent to file a lien claim. The notice is required to be given whether or not the
12 claimant has been required to and has given a previous notice pursuant to s. 779.02.
13 Such notice shall briefly describe the nature of the claim, its amount and the land
14 and improvement to which it relates.

15 **SECTION 30.** 779.06 (3) of the statutes is amended to read:

16 779.06 (3) Such a claim for lien shall have attached thereto a copy of any notice
17 given in compliance with s. 779.02 and a copy of the notice given in compliance with
18 sub. (2), and shall contain a statement of the contract or demand upon which it is
19 founded, the name of the person against whom the demand is claimed, the name of
20 the claimant and any assignee, the last date of the performance of any labor or the
21 furnishing of any materials, plans, or specifications, a legal description of the
22 property against which the lien is claimed, a statement of the amount claimed and
23 all other material facts in relation thereto. Such claim document shall be signed by
24 the claimant or attorney, need not be verified, and in case of action brought, may be
25 amended, as pleadings are.

BILL

1 **SECTION 31.** 779.07 (1) (d) of the statutes is amended to read:

2 779.07 (1) (d) Last date of performance of labor or furnishing materials, plans,
3 or specifications.

4 **SECTION 32.** 779.08 (1) of the statutes is amended to read:

5 779.08 (1) The person against whom a lien is claimed or any other interested
6 party may file with the clerk of court in whose office the claim for lien is filed an
7 undertaking executed by ~~2 or more sufficient sureties~~ a surety to the effect that the
8 person against whom the lien is claimed shall pay the amount of the claim and all
9 costs and damages which may be awarded against that person on account of the lien
10 or in lieu thereof deposit with the clerk of the court a sum of money, certified check
11 or negotiable government bonds in par value equal to 125% of the claim for lien. The
12 court in which any action to foreclose the lien may be brought shall determine any
13 question of sufficiency of the ~~sureties~~ surety if exception is taken thereto by the lien
14 claimant within 10 days after notice of the filing of such undertaking or deposit of
15 other security and may upon notice and upon motion of any party, order any sum of
16 money deposited to be invested. The clerk of court shall remove the lien from the
17 judgment and lien docket upon the court's order approving the surety in substitution
18 for the lien. The depositor shall be entitled to any income from the investments,
19 certified check or negotiable U.S. government bonds deposited and the clerk shall
20 pay the income to the depositor without order when received or, in the case of
21 coupons, as the income becomes due.

22 **SECTION 33.** 779.08 (2) of the statutes is amended to read:

23 779.08 (2) If an undertaking is furnished, it shall be accompanied by the
24 ~~affidavits~~ affidavit of the ~~sureties~~ surety in which each states that the surety is
25 worth, over and above all debts and liabilities in property within this state not

BILL

SECTION 33

1 exempt from execution, an amount in the aggregate equal to 125% or more of the
2 amount of the claim for lien.

3 **SECTION 34.** 779.10 of the statutes is amended to read:

4 **779.10 Judgment.** The judgment shall adjudge the amount due to each
5 claimant who is a party to the action. It shall direct that the interest of the owner
6 in the premises at the commencement of the work or furnishing the materials, plans,
7 or specifications for which liens are given and which the owner has since acquired,
8 or so much thereof as is necessary, be sold to satisfy the judgment, and that the
9 proceeds be brought into court with the report of sale to abide the order of the court.
10 If the premises can be sold in parcels without injury to the parties, the court may
11 adjudge that the sale be so made. If the plaintiff fails to establish a lien upon the
12 premises but does establish a right to recover for labor ~~or~~, materials, plans, or
13 specifications, the plaintiff may have a judgment against the party liable.

14 **SECTION 35.** 779.135 (1) of the statutes is amended to read:

15 779.135 (1) Provisions requiring ~~a contractor, subcontractor or material~~
16 ~~supplier~~ to waive his or her right to a construction lien or to a claim against a
17 payment bond before he or she has been paid for the labor ~~or~~, materials ~~or both~~, plans,
18 or specifications that he or she furnished.

19 **SECTION 36.** 779.14 (1) (a) of the statutes is amended to read:

20 779.14 (1) (a) Any person who has a direct contractual relationship, expressed
21 or implied, with the prime contractor or with any subcontractor of the prime
22 contractor to perform labor or furnish materials, plans, or specifications, except as
23 provided in par. (b).

24 **SECTION 37.** 779.14 (1) (b) of the statutes is amended to read:

INSEAT 18-18

BILL

1 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) for
2 highway improvements, any person who has a direct contractual relationship,
3 expressed or implied, with the prime contractor to perform labor or furnish
4 materials, plans, or specifications. *services*

5 **SECTION 38.** 779.14 (1e) (a) of the statutes is amended to read:

6 779.14 (1e) (a) All contracts involving \$10,000 or more for the performance of
7 furnishing labor or furnishing materials, plans, or specifications, when the same
8 pertains to any public improvement or public work shall contain a provision for the
9 payment by the prime contractor of all claims for labor performed and materials,
10 plans, or specifications furnished, used or consumed in making the public
11 improvement or performing the public work, *striking* including, without limitation because
12 of enumeration, ~~fuel, lumber, building materials, machinery, vehicles, tractors,~~
13 ~~equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline,~~
14 ~~motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's~~
15 ~~compensation insurance and contributions for unemployment insurance.~~ *services*

16 **SECTION 39.** 779.14 (1e) (b) of the statutes is amended to read:

17 779.14 (1e) (b) All contracts that are in excess of \$30,000, as indexed under sub.
18 (1s), and that are for the performance of labor or furnishing materials, plans, or
19 specifications for a public improvement or public work shall contain a provision
20 under which the prime contractor agrees, to the extent practicable, to maintain a list
21 of all subcontractors and suppliers performing labor or furnishing materials, plans,
22 or specifications under the contract.

23 **SECTION 40.** 779.14 (1m) (c) (intro.) of the statutes is amended to read:

BILL**SECTION 40**

1 779.14 (1m) (c) *State contracts.* (intro.) The following requirements apply to
2 contracts with the state for the performance of labor or furnishing materials, plans,
3 or specifications for a public improvement or public work:

4 **SECTION 41.** 779.14 (1m) (d) (intro.) of the statutes is amended to read:

5 779.14 (1m) (d) *Local government contracts.* (intro.) The following
6 requirements apply to contracts, other than contracts with the state, for the
7 performance of labor or furnishing materials, plans, or specifications for a public
8 improvement or public work:

9 **SECTION 42.** 779.14 (1m) (e) 2. b. of the statutes is amended to read:

10 779.14 (1m) (e) 2. b. The payment to every person, including every
11 subcontractor or supplier, of all claims that are entitled to payment for labor
12 performed and materials, plans, or specifications furnished for the purpose of
13 making the public improvement or performing the public work as provided in the
14 contract and sub. (1e) (a).

15 **SECTION 43.** 779.14 (2) (a) 2. of the statutes is amended to read:

16 779.14 (2) (a) 2. Except as provided in subd. 3., failure of the prime contractor
17 or a subcontractor of the prime contractor to comply with a contract, whether express
18 or implied, with a subcontractor or supplier for the performance of labor or
19 furnishing of materials, plans, or specifications for the purpose of making the public
20 improvement or performing the public work that is the subject of the contract with
21 the governmental entity.

22 **SECTION 44.** 779.14 (2) (a) 3. of the statutes is amended to read:

23 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) for
24 highway improvements, failure of the prime contractor to comply with a contract,
25 whether express or implied, with a subcontractor or supplier of the prime contractor

BILL

INSERT 21-21

1 for the performance of labor or furnishing of materials, plans, or specifications for the
2 purpose of making the highway improvement that is the subject of the contract with
3 the governmental entity.

4 **SECTION 45.** 779.14 (2) (am) 1. of the statutes is amended to read:

5 779.14 (2) (am) 1. Except as provided in subd. 2., a subcontractor or supplier
6 may maintain an action under par. (a) only if the subcontractor or supplier has
7 ~~notified~~ served a written notice on the prime contractor ~~in writing~~ that the
8 subcontractor or supplier has provided or will provide labor ~~or~~, materials, plans, or
9 specifications to the public work or improvement. The notice must be ~~provided~~
10 served no later than 60 days after the date on which the subcontractor or supplier
11 first provided the labor ~~or~~, materials, plans, or specifications.

12 **SECTION 46.** 779.14 (2) (am) 2. a. of the statutes is amended to read:

13 779.14 (2) (am) 2. a. The contract for the provision of the labor ~~or~~, materials,
14 plans, or specifications does not exceed \$5,000.

15 **SECTION 47.** 779.14 (3) of the statutes is amended to read:

16 779.14 (3) ACTIONS BY A COUNTY. In an action by a county upon the bond all
17 persons for whose protection it was given and who make claim thereunder may be
18 joined in the action. The county highway commissioner may take assignments of all
19 demands and claims for labor ~~or material~~, materials, plans, or specifications and
20 enforce the same in the action for the benefit of the assignors, and the judgment may
21 provide the manner in which the assignors shall be paid.

22 **SECTION 48.** 779.15 (1) of the statutes is amended to read:

23 ~~Statute~~ 779.15 (1) Any person ~~furnishing~~ materials, plans, or specifications
24 ~~to be~~ used or consumed in making public improvements or performing public work,
25 ~~including fuel, lumber, building materials, machinery, vehicles, tractors, equipment,~~

or furnishes any
who performs any work or service, or procures the performance of,
manages, supervises, or administers such work or service,

BILL**SECTION 48**

1 ~~fixtures, apparatus, tools, appliances, supplies, electrical energy, gasoline, motor oil,~~
2 ~~lubricating oil, greases, state imposed taxes, premiums for worker's compensation~~
3 ~~insurance and contributions for unemployment insurance, to any prime contractor,~~
4 except in cities of the 1st class, shall have a lien on the money or bonds or warrants
5 due or to become due the prime contractor therefor, if the lienor, before payment is
6 made to the prime contractor, ~~gives~~ serves a written notice ~~to~~ of the claim on the
7 debtor state, county, town, or municipality ~~of the claim~~. The debtor shall withhold
8 a sufficient amount to pay the claim and, when it is admitted by the prime contractor
9 or established under sub. (3), shall pay the claim and charge it to the prime
10 contractor. Any officer violating the duty hereby imposed shall be liable on his or her
11 official bond to the claimant for the damages resulting from the violation. There shall
12 be no preference between the lienors serving the notices.

13 **SECTION 49.** 779.15 (2) of the statutes is amended to read:

14 779.15 (2) Service of the notice under sub. (1) shall be made ~~by registered mail~~
15 upon the clerk of the municipality or in the clerk's absence upon the treasurer. If any
16 of the money due the prime contractor is payable by the state, service of the notice
17 under sub. (1) shall be served ~~by registered mail~~ upon the state department, board,
18 or commission having jurisdiction over the work. A copy of the notice shall be served
19 concurrently ~~by registered mail~~ upon the prime contractor.

20 **SECTION 50.** 779.15 (3) of the statutes is amended to read:

21 779.15 (3) If a valid lien exists under sub. (1) and the prime contractor does not
22 dispute the claim within 30 days after service on the prime contractor of the notice
23 provided in sub. (2), by serving written notice ~~to~~ on the debtor state, county, town,
24 or municipality and the lien claimant, the amount claimed shall be paid over to the
25 claimant on demand and charged to the prime contractor pursuant to sub. (1). If the

BILL

(NSEA 8 3-15)

1 prime contractor disputes the claim, the right to a lien and to the moneys in question
2 shall be determined in an action brought by the claimant or the prime contractor.
3 If the action is not brought within 3 months from the time the notice required by sub.
4 (1) is served, and notice of bringing the action filed with the officer with whom the
5 claim is filed, the lien rights are barred.

6 SECTION 51. 779.15 (4) (a) of the statutes is amended to read:

7 779.15 (4) (a) When the total of the lien claims exceeds the sum due the prime
8 contractor and where the prime contractor has not disputed the amounts of the
9 claims filed, the debtor state, county, town or municipality, through the officer, board,
10 department or commission with whom the claims are filed, shall determine on a
11 proportional basis who is entitled to the money and shall notify all claimants and the
12 prime contractor in writing of the determination. Unless an action is commenced by
13 a claimant or by the prime contractor within 20 days after the mailing of the notice,
14 the money shall be paid out in accordance with the determination and the liability
15 of the state, county, town or municipality to any lien claimant shall cease.

16 SECTION 52. 779.16 of the statutes is amended to read:

17 779.16 Theft by contractors. All moneys, bonds or warrants paid or to
18 become due to any prime contractor or subcontractor for public improvements are a
19 trust fund only in the hands of the prime contractor or subcontractor to the amount
20 of all claims due or to become due or owing from the prime contractor or subcontractor
21 for labor and materials used for the improvements, until all the claims have been
22 paid, and shall not be a trust fund in the hands of any other person. The use of the
23 any such moneys by the any prime contractor or subcontractor for any other purpose
24 other than the payment of claims on such public improvement, before the until all
25 claims have been satisfied, constitutes, except those which are the subject of a bona

plans, and specifications

BILL**SECTION 52**

fide dispute and then only to the extent of the amount actually in dispute, have been
paid in full or proportionally in cases of a deficiency, is theft by the prime contractor
or subcontractor of moneys so misappropriated and is punishable under s. 943.20.
This If the prime contractor or subcontractor is a corporation, limited liability
company, or other legal entity other than a sole proprietorship, such
misappropriation also shall be deemed theft by any officers, directors, members,
partners, or agents responsible for the misappropriation. Any of such
misappropriated moneys which have been received as salary, dividend, loan
repayment, capital distribution or otherwise by any shareholder, member, or partner
not responsible for the misappropriation shall be a civil liability of that person and
may be recovered and restored to the trust fund specified in this subsection by action
brought by any interested party for that purpose. Except as provided in this
subsection, this section shall not create a civil cause of action against any person
other than the prime contractor or subcontractor to whom such moneys are paid or
become due. Until all claims are paid in full, have matured by notice and filing or
have expired, such money, bonds and warrants shall not be subject to garnishment,
execution, levy or attachment.

SECTION 53. Initial applicability.

(1) This act first applies to labor, materials, plans, and specifications that are
provided on the effective date of this subsection.

(END)

INSERT
24-17

improvements that visibly
commence

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2227/2dn

MDK: *kgf*

Date

Sen. Zien:

This version makes the changes you requested. Please note the following:

1. As you requested, I eliminated the "laundry list" of materials in ss. 779.14 (1e) (a) and 779.15 (1). You stated that "this deletion is not intended to be a limitation on what is lienable, but a means of expanding the scope of lienable 'improvements' so that it remains flexible as means and methods of construction grow and develop." From a drafting standpoint, I agree that the deletion accomplishes your intent. By eliminating the "laundry list", the foregoing statutes are intended to apply to **any** material consumed in making an improvement.
2. As you requested, I retained the reference to last-known address in s. 779.02 (2) (b). However, I don't think the retention is necessary. The definition of "serve" or "served" refers to service in the manner described in s. 801.14, and s. 801.14 (2) requires service at the last-known address. If you agree that the reference to last-known address is no longer necessary in s. 779.02 (2) (b), let me know and I will revise the draft.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2227/2ins
MDK:.....

1 **INSERT 2A:**

2 ***Publicly financed projects.***

3 **INSERT 2B:**

The bill eliminates the foregoing list and refers instead to a person who furnishes any material used or consumed in making a publicly financed improvement.

4 **INSERT 3A:**

X 5. The bill changes certain references to "contractor" or "general contractor" under current law to refer instead to "prime contractor".

6 **INSERT 6-6:**

7 **SECTION 1.** 779.01 (2) (d) 2. of the statutes is amended to read:

8 779.01 (2) (d) 2. An owner of land who acts personally as general prime
9 contractor in improving such land.

History: 1973 c. 231; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.01; 1983 a. 189; 1993 a. 453; 1995 a. 225, 227; 1997 a. 27, 35, 44, 252.

10 **INSERT 7-20:**

11 **SECTION 2.** 779.02 (2) (title) of the statutes is amended to read:

12 779.02 (2) (title) NOTICE TO OWNER, LENDER, AND MATERIALMAN SUPPLIER.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

13

14 **INSERT 9-21:**

15 **SECTION 3.** 779.02 (2) (d) of the statutes is amended to read:

16 779.02 (2) (d) Every mortgage lender making an improvement or construction
17 loan shall make reasonable inquiry of the owner as to whether any notices required
18 by this subsection have been given. A lender is not required to pay out any loan
proceeds unless or until the prime contractor has given any notice required of such
the prime contractor by this subsection.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395.

19 **INSERT 18-18:**

20 **SECTION 4.** 779.135 (3) of the statutes is amended to read:

1 779.135 (3) Provisions making a payment to a general prime contractor from
2 any person who does not have a contractual agreement with the subcontractor or
3 supplier a condition precedent to a general prime contractor's payment to a
4 subcontractor or a supplier. This subsection does not prohibit contract provisions
5 that may delay a payment to a subcontractor until the prime contractor receives
6 payment from any person who does not have a contractual agreement with the
7 subcontractor or supplier.

8 History: 1993 a. 213 ss. 164, 165; Stats. 1993 s. 779.135.

INSERT 21-21:

9 **SECTION 5.** 779.15 (title) of the statutes is amended to read:

10 **779.15 (title) Public improvements; lien on money, bonds, or warrants**
11 **due the prime contractor; duty of officials.**

12 History: 1975 c. 147 s. 54; 1975 c. 199, 224, 422; 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.15; 1997 a. 39.

INSERT 23-15:

13 **SECTION 6.** 779.155 (2) of the statutes is amended to read:

14 779.155 (2) CERTIFIED COPIES OF JUDGMENTS FILED. In this section,
15 "municipality" includes city, village, county, town, school district, technical college
16 district and any quasi municipal corporation. When the state or any municipality
17 is indebted to any prime contractor, the owner of a judgment against the prime
18 contractor may attach the debt by filing a certified copy of his or her judgment in the
19 manner and subject to the conditions and limitations of this section. If the debt is
20 owed by the state upon a contract for public improvements, the certified copy shall
21 be filed with the officer, board, department or commission having jurisdiction over
22 the work. Otherwise, the copy shall be filed with the department of administration.
23 If the debt is owed by a municipality, the copy shall be filed with the municipal clerk
24 or corresponding officer. The judgment creditor shall promptly notify the judgment

1 debtor of the filing, within the time and as provided by s. 812.07 for service upon the
2 defendant.

History: 1971 c. 154; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.155; 1993 a. 80, 399, 486; 1999 a. 185; 2001 a. 38.

3 **SECTION 7.** 779.155 (3) of the statutes is amended to read:

4 779.155 (3) PAYMENT TO JUDGMENT CREDITOR; EXCEPTION. Except as to prime
5 contractors on public works, the proper officers of the state or municipality shall pay
6 the judgment out of moneys due the prime contractor or which become due the
7 contractor, but no payment shall be made until 30 days after the creditor has filed
8 with such officers proof that the contractor had been notified of the filing of a copy
9 of the judgment against the contractor.

History: 1971 c. 154; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.155; 1993 a. 80, 399, 486; 1999 a. 185; 2001 a. 38.

10 **SECTION 8.** 779.155 (4) of the statutes is amended to read:

11 779.155 (4) SAME; FUNDS DUE PUBLIC PRIME CONTRACTORS. When the state or a
12 municipality is indebted to a prime contractor for public improvements, payment
13 shall not be made to the judgment creditor until 3 months after final completion and
14 acceptance of the public work and then only out of moneys due the prime contractor
15 in excess of unpaid lienable claims having priority under s. 779.15.

History: 1971 c. 154; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.155; 1993 a. 80, 399, 486; 1999 a. 185; 2001 a. 38.

16 **SECTION 9.** 779.155 (5) (a) of the statutes is amended to read:

17 779.155 (5) (a) For the purpose of administering this section, sworn statements
18 of the prime contractor setting forth the unpaid lien claims that have been or may
19 be filed under s. 779.15 may be accepted by the proper officer, board, department, or
20 commission, unless the judgment creditor or other interested person gives written
21 notice that an action is pending to determine whether specified lien claims were

1 incurred in performing the public work and the amount thereof, or to determine
2 priorities in which event payments shall await the result of the action.

History: 1971 c. 154; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.155; 1993 a. 80, 399, 486; 1999 a. 185; 2001 a. 38.

3 **SECTION 10.** 779.155 (5) (b) of the statutes is amended to read:

4 779.155 (5) (b) Within 10 days after filing the certified copy of the judgment
5 under sub. (2), the prime contractor shall file the sworn statement in duplicate, with
6 the proper officer, board, department or commission, who shall immediately furnish
7 the judgment creditor with one of the statements. The judgment creditor shall have
8 10 days from the receipt thereof in which to serve the notice of pendency of the court
9 action.

History: 1971 c. 154; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.155; 1993 a. 80, 399, 486; 1999 a. 185; 2001 a. 38.

10 **SECTION 11.** 779.155 (6) of the statutes is amended to read:

11 779.155 (6) PAYMENTS TO JUDGMENT CREDITOR. After the expiration of the
12 3-month period, the moneys due the prime contractor in excess of unpaid lienable
13 expenses and claims incurred in performing the public work shall be paid to the
14 judgment creditor, but not exceeding the amount due on the judgment.

History: 1971 c. 154; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.155; 1993 a. 80, 399, 486; 1999 a. 185; 2001 a. 38.

15 **SECTION 12.** 779.155 (7) of the statutes is amended to read:

16 779.155 (7) PRIORITY OF JUDGMENTS OVER ASSIGNMENTS. Any judgment filed
17 under this section has priority over an assignment made by the prime contractor
18 after the commencement of the action in which the judgment was obtained.

History: 1971 c. 154; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.155; 1993 a. 80, 399, 486; 1999 a. 185; 2001 a. 38.

19 **INSERT 24-17:**

20 **SECTION 13.** 779.17 of the statutes is amended to read:

21 **779.17 Release of funds on filing bond.** At any time after the service of a
22 notice of lien claim or filing of judgment or pending the determination of any action

1 commenced thereunder, the prime contractor shall be entitled to the release of any
2 moneys due the prime contractor under the contract upon filing a bond, executed by
3 a surety company duly authorized to transact business in this state, with the public
4 authority having jurisdiction over the work, guaranteeing that the prime contractor
5 will pay any judgment of the court rendered in favor of the lien claimant and all
6 judgments filed. Such bond shall be in an amount sufficient to insure payment of the
7 lien claims and judgments, and shall be approved as to form and amount by the
8 public authority.

History: 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.17.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2227/2dn
MDK:kjfrs

October 6, 2005

Sen. Zien:

This version makes the changes you requested. Please note the following:

1. As you requested, I eliminated the "laundry list" of materials in ss. 779.14 (1e) (a) and 779.15 (1). You stated that "this deletion is not intended to be a limitation on what is lienable, but a means of expanding the scope of lienable 'improvements' so that it remains flexible as means and methods of construction grow and develop." From a drafting standpoint, I agree that the deletion accomplishes your intent. By eliminating the "laundry list," the foregoing statutes are intended to apply to **any** material consumed in making an improvement.
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Mark D. Kunkel
Senior Legislative Attorney
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Kunkel, Mark

From: Kim A. Hurtado [KHurtado@Hurtadosc.com]
Sent: Thursday, October 13, 2005 11:49 AM
To: Kunkel, Mark
Subject: FW: 2005 Bill

Attachments: 2005 BILL.pdf



2005 BILL.pdf (6
MB)

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Per our discussions; more to follow. Thank you.

2005 BILL

1 **AN ACT** *to amend* 59.40 (2) (f), 66.0901 (2), 703.22 (title), 703.22 (2), 703.22 (3),
2 779.01 (2) (a), 779.01 (2) (d) 2., 779.01 (3), 779.01 (5), 779.02 (1) (c), 779.02 (1)
3 (e), 779.02 (2) (title), 779.02 (2) (a), 779.02 (2) (b), 779.02 (2) (c), 779.02 (2) (d),
4 779.02 (2) (e), 779.02 (3), 779.02 (5), 779.03 (1), 779.035 (1), 779.035 (2) (b) 1.,
5 779.035 (2) (b) 2. a., 779.035 (3), 779.036 (1), 779.036 (2), 779.036 (3), 779.036
6 (4) (a), 779.05 (1), 779.06 (1), 779.06 (2), 779.06 (3), 779.07 (1) (d), 779.08 (1),
7 779.08 (2), 779.10, 779.135 (1), 779.135 (3), 779.14 (1) (a), 779.14 (1) (b), 779.14
8 (1e) (a), 779.14 (1e) (b), 779.14 (1m) (c) (intro.), 779.14 (1m) (d) (intro.), 779.14
9 (1m) (e) 2. b., 779.14 (2) (a) 2., 779.14 (2) (a) 3., 779.14 (2) (am) 1., 779.14 (2) (am)
10 2. a., 779.14 (3), 779.15 (title), 779.15 (1), 779.15 (2), 779.15 (3), 779.15 (4) (a),
11 779.155 (2), 779.155 (3), 779.155 (4), 779.155 (5) (a), 779.155 (5) (b), 779.155 (6),
12 779.155 (7), 779.16 and 779.17; and **to create** 779.01 (2) (e) of the statutes;

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- 1 **relating to:** construction liens, requirements for securing payment for work on
2 publicly financed projects, and providing a penalty.
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Analysis by the Legislative Reference Bureau

Current law allows persons (such as prime contractors, subcontractors, and suppliers) who do work or furnish materials for improvements to real estate to file liens on the real estate to secure their right to payment. These liens are generally referred to as “construction liens.” Under current law, construction liens are available on projects that do not involve public financing. Current law imposes different requirements for securing payment for work performed or materials furnished for projects that are publicly financed.

This bill makes the following changes to construction liens and the requirements that apply to publicly financed projects:

Repairs and remodeling. Under current law, a person may claim a construction lien for an “improvement” to real estate, which is defined as any building, structure, erection, demolition, alteration, excavation, filling, grading, tiling, planting, or landscaping that is done on or to land for its permanent benefit. This bill expands the definition to also include repairing or remodeling that is done on or to land for its benefit. The bill also eliminates the requirement that an improvement must be for the permanent benefit of the land.

Publicly financed projects. The requirements under current law for publicly financed projects apply to persons who furnish material used or consumed in making a publicly financed improvement, including any in the following list: fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker’s compensation insurance, and contributions for unemployment insurance. The bill eliminates the foregoing list and refers instead to a person who furnishes any material ~~used or consumed~~ in making a publicly financed improvement. *labor or services*

Plans and specifications. Current law allows a person to claim a construction lien for labor that the person performs, or materials, plans, or specifications, that the person provides, for an improvement to real estate. However, in referring to labor and materials, current law does not consistently also refer to plans and specifications. This bill corrects the references to refer to plans and specifications. The bill also amends the requirements regarding publicly financed projects so that they consistently refer to plans and specifications, as well as labor and materials.

Sixty-day and ten-day notices. Under current law, a subcontractor or supplier who works or furnishes material for certain improvements to real estate is not allowed to make a claim for a construction lien unless, within 60 days after first performing work or furnishing material for the project, the subcontractor or supplier has provided the owner of the real estate a notice specified under current law. The improvements that this notice requirement applies to are the following: 1) a wholly

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residential improvement in which four or less family living units are provided or added; and 2) a partly or wholly nonresidential improvement in which 10,000 or less total usable square feet are provided or added. A prime contractor must also give a notice to the owner in order to claim a construction lien for the foregoing types of improvements. If the contractor does not ~~include the notice in the contract with the owner~~, the prime contractor must provide the notice within ten days after labor or materials are furnished. If the prime contractor does not provide the notice, the prime contractor may claim a construction lien only if certain other requirements are satisfied.

Under the bill, for a wholly residential improvement described above, a subcontractor or supplier must provide the 60-day notice, ~~and the prime contractor must provide the ten-day notice.~~ However, notice by a subcontractor, supplier, or prime contractor is not required for any wholly or partly nonresidential improvement, regardless of the square footage of usable floor space that is added or provided.

In addition, under the bill, if a ten-day notice is required and the prime contractor does not provide the notice, the prime contractor may claim a construction lien, but only if the prime contractor's subcontractors and suppliers have been paid and none of the prime contractor's subcontractors or suppliers have ~~provided the 60-day notice to the owner~~. Current law also allows a prime contractor to claim a construction lien under these circumstances, except that current law refers to subcontractors and suppliers, rather than specifically referring to the prime contractor's subcontractors and suppliers.

rights remaining

Service of notice. Current law contains various notice requirements for construction liens and publicly financed projects. Under this bill, any duty to provide notice regarding a construction lien or a publicly financed project may be accomplished by serving the notice on a party in any of the following ways: 1) by personal delivery; 2) by registered or certified mail; 3) in the same manner that is required under current law for service of a summons in circuit court; or 4) by any other means of delivery in which the party receiving the notice makes written confirmation of the delivery.

Other changes. The bill makes other changes, including the following:

1. Under current law, a person may not bring an action to enforce a construction lien on real estate unless, within six months from the date the person last performed work or furnished materials, the person files a claim for the lien with the circuit court. This bill requires a person to serve a copy of the claim on the owner of the real estate within 30 days after filing the claim with the circuit court.

2. Under current law, under certain circumstances, an owner of real estate or other interested party may release a construction lien from the real estate by substituting two sureties for the lien. This bill requires only one surety.

3. Under current law, prime contractors and subcontractors on both privately and publicly financed projects must hold certain moneys in trust for the payment of claims for labor and materials. Failure to comply with this requirement is theft. Under this bill, if the prime contractor or subcontractor is a business entity, specified individuals who represent the entity may also be guilty of theft.

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4. Current law allows a prime contractor on a publicly financed project to dispute a claim for payment by a subcontractor or supplier. If the prime contractor disputes the claim, the prime contractor must provide written notice of the dispute to the governmental body contracting for the work. This bill requires the prime contractor also to provide written notice of the dispute to the subcontractor or supplier.

5. The bill changes certain references to "contractor" or "general contractor" under current law to refer instead to "prime contractor," *meaning a person or entity having a contract directly with the owner of the improved real property*

6. Under current law, persons who supply material for an improvement are referred to as suppliers, materialmen, or material suppliers. Under this bill, such persons are consistently referred to as "suppliers."

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.40 (2) (f) of the statutes is amended to read:

2 59.40 (2) (f) Keep a judgment and lien docket of all claims for liens filed by
3 contractors, subcontractors, ~~materialmen~~ suppliers, and laborers and all claims filed
4 for log, mining, and maintenance liens.

5 **SECTION 2.** 66.0901 (2) of the statutes is amended to read:

6 66.0901 (2) BIDDER'S PROOF OF RESPONSIBILITY. A municipality intending to enter
7 into a public contract may, before delivering any form for bid proposals, plans, and
8 specifications to any person, except ~~materialmen~~, suppliers, and others not
9 intending to submit a direct bid, require the person to submit a full and complete
10 statement sworn to before an officer authorized by law to administer oaths. The
11 statement shall consist of information relating to financial ability, equipment,
12 experience in the work prescribed in the public contract, and other matters that the

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1 municipality requires for the protection and welfare of the public in the performance
2 of a public contract. The statement shall be in writing on a standard form of a
3 questionnaire that is adopted and furnished by the municipality. The statement
4 shall be filed in the manner and place designated by the municipality. The statement
5 shall not be received less than 5 days prior to the time set for the opening of bids.
6 The contents of the statement shall be confidential and may not be disclosed except
7 upon the written order of the person furnishing the statement, for necessary use by
8 the public body in qualifying the person, or in cases of actions against, or by, the
9 person or municipality. The governing body of the municipality or the committee,
10 board, or employee charged with, or delegated by the governing body with, the duty
11 of receiving bids and awarding contracts shall properly evaluate the statement and
12 shall find the maker of the statement either qualified or unqualified. This subsection
13 does not apply to a 1st class city.

14 **SECTION 3.** 703.22 (title) of the statutes is amended to read:

15 **703.22** (title) ^{Statutory} ~~Mechanics' and materialmen's suppliers' liens.~~

16 **SECTION 4.** 703.22 (2) of the statutes is amended to read:

17 **703.22 (2)** Any ^{under Ch. 779} ~~mechanics' lien or materialmen's suppliers' lien~~ arising as a
18 result of repairs to or improvements of a unit by a unit owner shall be a lien only
19 against the unit.

20 **SECTION 5.** 703.22 (3) of the statutes is amended to read:

21 **703.22 (3)** Any ^{under Ch. 779} ~~mechanics' or materialmen's suppliers' lien~~ arising as a result
22 of repairs to or improvements of the common elements, if authorized in writing by
23 the association, shall be paid by the association as a common expense and until paid
24 shall be a lien against each unit in proportion to its percentage interest in the
25 common elements. On payment of the proportionate amount by any unit owner to

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1 the lienor or on the filing of a written undertaking in the manner specified by s.
2 779.08, the unit owner shall be entitled to a release of his or her unit from the lien
3 and the association shall not be entitled to assess his or her unit for payment of the
4 remaining amount due for the repairs or improvements.

5 **SECTION 6.** 779.01 (2) (a) of the statutes is amended to read:

6 779.01 (2) (a) "Improve" or "improvement" includes any building, structure,
7 erection, fixture, demolition, alteration, excavation, filling, grading, tiling, planting,
8 clearing ~~or~~ landscaping, repairing, or remodeling which is built, erected, made or
9 done on or to land for its ~~permanent~~ benefit. This enumeration is intended as an
10 extension rather than a limitation of the normal meaning and scope of "improve" and
11 "improvement".

12 **SECTION 7.** 779.01 (2) (d) 2. of the statutes is amended to read:

13 779.01 (2) (d) 2. An owner of land who acts personally as ~~general~~ prime
14 contractor in improving such land.

15 **SECTION 8.** 779.01 (2) (e) of the statutes is created to read:

16 779.01 (2) (e) "Serve" or "served" means personal delivery, delivery by
17 registered or certified mail, service in a manner described for service of a summons
18 under s. 801.14, or any other means of delivery in which the recipient makes written
19 confirmation of the delivery.

20 **SECTION 9.** 779.01 (3) of the statutes is amended to read:

21 779.01 (3) EXTENT AND CHARACTER OF LIEN. ~~Every~~ Any person who performs any
22 work or service, or procures its performance or furnishes any labor ~~or~~, materials ~~or~~,
23 ~~plans, or specifications, used or consumed~~ or other services for the improvement of land, and who
24 complies with s. 779.02, shall have a lien therefor on all interests in the land
25 belonging to its owners. The lien extends to all contiguous land of the owner, but if

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1 the improvement is located wholly on one or more platted lots belonging to the owner,
2 the lien applies only to the lots on which the improvement is located.

3 **SECTION 10.** 779.01 (5) of the statutes is amended to read:

4 779.01 (5) ASSIGNMENT OF LIEN, GARNISHMENT. Assignment of a claim or right
5 to a lien or any part thereof by a prime contractor, or garnishment by the creditor of
6 a prime contractor, subcontractor, ~~materialman~~ supplier, laborer or mechanic, shall
7 not operate to compel the owner, prime contractor, subcontractor or ~~materialman~~
8 supplier to pay the assignee or creditor until the lien claims of subcontractors,
9 ~~materialmen~~ suppliers, and laborers under this subchapter have either been paid in
10 full, matured by notice and filing or expired. If such claims become liens, the owner,
11 prime contractor, subcontractor or ~~materialman~~ supplier shall be compelled to pay
12 such assignee or creditor only what remains due in excess of such liens.

13 **SECTION 11.** 779.02 (1) (c) of the statutes is amended to read:

14 779.02 (1) (c) By any lien claimant furnishing labor ~~or~~ materials, plans, ~~or~~ or other services
15 specifications for an improvement in any case where more than 4 family living units
16 are to be provided or added by such work of improvement, if the improvement is
17 wholly residential in character, or in any case where ~~more than 10,000 total usable~~
18 ~~square feet of floor space is to be provided or added by such work of improvement,~~
19 if the improvement is partly or wholly nonresidential in character.

20 **SECTION 12.** 779.02 (1) (e) of the statutes is amended to read:

21 779.02 (1) (e) By any lien claimant, other than a prime contractor, who
22 furnishes labor ~~or~~ materials, plans, ~~or~~ or other services specifications for an improvement on a project
23 on which the prime contractor is not required to give notice under this section.

24 **SECTION 13.** 779.02 (2) (title) of the statutes is amended to read:

25 779.02 (2) (title) NOTICE TO OWNER, LENDER, AND MATERIALMAN SUPPLIER.

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SECTION 14

1 SECTION 14. 779.02 (2) (a) of the statutes is amended to read:

2 779.02 (2) (a) Every prime contractor who enters into a contract with the owner
3 for ~~a work~~ ^f of improvement ~~of~~ the owner's land and who has contracted or will
4 contract with any subcontractors, ~~or materialmen suppliers~~ ^{or service providers} to provide labor or,
5 materials, ~~plans or specifications~~ ^{or other services} for the ~~work of~~ ^{the} improvement shall include in any
6 written contract with the owner the notice required by this paragraph, and shall
7 provide the owner with a copy of the written contract. If no written contract for the
8 ~~work of~~ ^g improvement is entered into, the notice shall be prepared separately and
9 served ~~personally or by registered mail~~ on the owner or authorized agent within 10
10 days after the first labor or, materials, ~~plans or specifications~~ ^{or other services} are furnished for the
11 improvement by or pursuant to the authority of the prime contractor. The notice,
12 whether included in a written contract or separately given, shall be in at least
13 8-point bold type, if printed, or in capital letters, if typewritten. It shall be in
14 substantially the following language: "As required by the Wisconsin construction
15 lien law, builder claimant hereby notifies owner that persons or companies
16 furnishing labor or, materials, ~~plans or specifications~~ ^{or other services} for the construction on owner's
17 land may have lien rights on owner's land and buildings if not paid. Those entitled
18 to lien rights, in addition to the undersigned builder claimant, are those who contract
19 directly with the owner or those who give the owner notice within 60 days after they
20 first furnish labor or, materials, ~~plans or specifications~~ ^{or other services} for the ~~construction~~ ^{improvements}.
21 Accordingly, owner probably will receive notices from ~~those who furnish labor or,~~ ^{these persons}
22 ~~materials, plans or specifications for the construction~~, and should give a copy of each
23 notice received to the ^{if} mortgage lender, if any. Builder Claimant agrees to cooperate
24 with the owner and the owner's lender, if any, to see that all potential lien claimants
25 are duly paid".

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1 SECTION 15. 779.02 (2) (b) of the statutes is amended to read:

2 779.02 (2) (b) Every person other than a prime contractor who furnishes labor
3 or materials, ~~plans, or specifications~~ ^{or other services} for an improvement shall have the lien and
4 remedy under this subchapter only if within 60 days after furnishing the first labor
5 or materials, ~~plans, or specifications~~ ^{or other services,} the person ~~gives~~ ^{serves} a written notice in
6 writing, in 2 signed copies, ~~to the owner either by personal service on the owner or~~
7 authorized agent ~~or by registered mail with return receipt requested to the owner or~~
8 authorized agent at the last-known post-office address. The owner or agent shall
9 provide a copy of the notice received, within 10 days after receipt, to any mortgage
10 lender who is furnishing or is to furnish funds for construction of the improvement
11 to which the notice relates. The notice to the owner shall be in substantially the
12 following language, with blanks accurately filled in: "As a part of your construction
13 contract, your ^{prime} contractor ~~or builder claimant~~ has already advised you that those who
14 furnish labor or materials, ~~plans, or specifications~~ ^{or other services to improve your property} for the work will be notifying you.
15 The undersigned first furnished labor or materials, ~~plans, or specifications~~ ^{or other service} on
16 (give date) for the improvement now under construction on your real estate at
17 (give legal description, street address or other clear description). Please give your
18 mortgage lender the extra copy of this notice within 10 days after you receive this,
19 so your lender, too, will know that the undersigned is included in the job".

20 SECTION 16. 779.02 (2) (c) of the statutes is amended to read:

21 779.02 (2) (c) If any prime contractor required to give the notice prescribed in
22 par. (a) fails to give notice as required, ~~such~~ the prime contractor does not have the
23 lien and remedy provided by this subchapter unless the prime contractor pays all of
24 the prime contractor's obligations to its subcontractors and materialmen suppliers
25 in respect to the work of improvement within the time periods under s. 779.06 and

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1 until the time for notice under par. (b) has elapsed and ~~no lien claimant~~ *none of its*

2 ~~subcontractors or suppliers gives notice as a lien claimant~~ *service providers or such subcontractors* under par. (b) gives notice.

3 *service providers or suppliers have waived all lien rights in full as provided in s. 779.05*
SECTION 17. 779.02 (2) (d) of the statutes is amended to read:

4 779.02 (2) (d) Every mortgage lender making an improvement or construction
5 loan shall make reasonable inquiry of the owner as to whether any notices required
6 by this subsection have been given. A lender is not required to pay out any loan
7 proceeds unless or until the prime contractor has given any notice required of such
8 the prime contractor by this subsection.

9 SECTION 18. 779.02 (2) (e) of the statutes is amended to read:

10 779.02 (2) (e) If the owner or lender complains of any insufficiency of any notice,
11 the burden of proof is upon the owner or lender to show that he or she has been misled
12 or deceived by the insufficiency. If there is more than one owner, giving the notice
13 required to any one owner or authorized agent is sufficient. In addition, every prime
14 contractor and subcontractor, at the time of purchasing or contracting for any
15 materials to be used in any of the cases enumerated in s. 779.01, shall upon request
16 deliver to the ~~materialman~~ supplier a description of the real estate upon which the
17 materials are to be used and the name and post-office address of the owner and
18 authorized agent, if any. Failure to receive such description and name and address
19 does not relieve a ~~materialman~~ supplier who asserts a lien from the requirement of
20 giving timely notice.

21 SECTION 19. 779.02 (3) of the statutes is amended to read:

22 779.02 (3) FAILURE TO GIVE NOTICE; SAVING CLAUSE. Any lien claimant, other than
23 the prime contractor, who fails to give a notice as required by sub. (2) (b) shall have
24 no lien on the land or improvement to which the failure relates. Any claimant who
25 serves a late but otherwise proper notice ~~personally or by registered mail~~ on the

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1 owner or authorized agent shall have the lien provided by s. 779.01 for any labor or
2 materials, ~~plans, or specifications~~ ^{or other services} furnished after the late notice is actually received
3 by the owner. The burden of proving that labor or, materials, ~~plans, or specifications~~ ^{or other}
4 ^{services} for which a lien is claimed were furnished after that date is on the lien claimant.

5 SECTION 20. 779.02 (5) of the statutes is amended to read:

6 779.02 (5) THEFT BY CONTRACTORS. The proceeds of any mortgage on land paid
7 to any prime contractor, ~~or any subcontractor~~ ^{service provider, or supplier} for improvements upon the mortgaged
8 premises, and all moneys paid to any ~~prime contractor or subcontractor~~ ^{of them} by any owner
9 for improvements, constitute a trust fund only in the hands of ~~the prime contractor~~ ^{that person}
10 ~~or subcontractor~~ to the amount of all claims due or to become due or owing from them
11 ~~prime contractor or subcontractor~~ for labor and, materials, plans, ~~and specifications~~ ^{or other}
12 ^{services} used for the improvements, until all the claims have been paid, and shall not be a
13 trust fund in the hands of any other person. The use of any such moneys by any prime
14 contractor, ~~or subcontractor~~ ^{service provider, or supplier} for any other purpose until all claims, except those which
15 are the subject of a bona fide dispute and then only to the extent of the amount
16 actually in dispute, have been paid in full or proportionally in cases of a deficiency,
17 is theft by the ~~prime contractor or subcontractor~~ ^{person} of moneys so misappropriated and
18 is punishable under s. 943.20. If the ~~prime contractor or subcontractor~~ ^{person} is a
19 corporation, limited liability company, or other legal entity other than a sole
20 proprietorship, such misappropriation also shall be deemed theft by any officers,
21 directors or, members, partners, or agents of the corporation responsible for the
22 misappropriation. Any of such misappropriated moneys which have been received
23 as salary, dividend, loan repayment, capital distribution or otherwise by any
24 shareholder ~~of the corporation, member, or partner~~ not responsible for the
25 misappropriation shall be a civil liability of ~~the shareholder~~ that person and may be

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1 recovered and restored to the trust fund specified in this subsection by action brought
2 by any interested party for that purpose. Except as provided in this subsection, this
3 section does not create a civil cause of action against any other person other than the
4 prime contractor, ^{service provider, or supplier} or subcontractor to whom such moneys are paid. Until all claims
5 are paid in full, have matured by notice and filing or have expired, such proceeds and
6 moneys shall not be subject to garnishment, execution, levy or attachment.

7 **SECTION 21.** 779.03 (1) of the statutes is amended to read:

8 779.03 (1) NO AGREEMENT BY OTHER THAN CLAIMANT MAY INVALIDATE LIEN. Subject
9 to s. 779.05, a lien claimant may waive the lien given by s. 779.01 by a writing signed
10 by the lien claimant, but no action by nor agreement between any other persons shall
11 invalidate the lien, other than payment in full to the claimant for the labor ~~or~~
12 materials, plans, ^{or specifications} ~~or other services~~ to which the lien claim relates.

13 **SECTION 22.** 779.035 (1) of the statutes is amended to read:

14 779.035 (1) To eliminate lien rights as provided in s. 779.03 (2), the contract
15 between the owner and the prime contractor for the ~~construction of the~~ improvement
16 shall contain a provision for the payment by the prime contractor of all claims for
17 labor performed and materials ~~or~~ plans, ^{or specifications} ~~or other services~~
18 consumed, except ~~plans or specifications~~ ^{work or services by other persons directly} furnished by the architect, professional
19 ~~engineer or surveyor~~ ^{labor, materials} employed by the owner, in making such improvement and
20 performing the work of improvement. The contract shall not be effective to eliminate
21 lien rights unless the prime contractor gives a bond issued by a surety company
22 licensed to do business in this state. The bond shall carry a penalty for unpaid claims
23 of not less than the contract price, and shall be conditioned for the payment to every
24 person entitled thereto of all the claims for labor performed, and materials, plans,
25 ~~or specifications~~ ^{or other services} furnished under the contract and subsequent amendments thereto,

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1 to be used or consumed in making the improvement or performing the work of
2 improvement as provided in the contract and subsequent amendments thereto. The
3 bond shall be approved by the owner and by any mortgage lender furnishing funds
4 for the construction of the improvement. No assignment, modification or change in
5 the contract, or change in the work ^{or services} covered thereby, or any extension of time for
6 completion of the contract shall release the sureties on the bond.

7 **SECTION 23.** 779.035 (2) (b) 1. of the statutes is amended to read:

8 779.035 (2) (b) 1. Except as provided in subd. 2., a subcontractor or supplier
9 may maintain an action under par. (a) only if the subcontractor or supplier has
10 notified the prime contractor in writing that the subcontractor or supplier was
11 providing labor or, materials, plans, or specifications, ^{or ~~other~~ services} for the ~~construction of the~~
12 improvement. The notice must be provided no later than 60 days after the date on
13 which the subcontractor or supplier first provided the labor or, materials, plans, or
14 specifications, ^{or ~~other~~ services}.

15 **SECTION 24.** 779.035 (2) (b) 2. a. of the statutes is amended to read:

16 779.035 (2) (b) 2. a. The contract for the provision of the labor or, materials,
17 plans, or specifications, ^{or ~~other~~ services} does not exceed \$5,000.

18 **SECTION 25.** 779.035 (3) of the statutes is amended to read:

19 779.035 (3) In any case in which the improvement contract and bond have been
20 prepared and executed pursuant to sub. (1) upon inquiry by any subcontractor,
21 ~~materialman~~ ^{service provider,} supplier, laborer or mechanic furnishing labor or, materials, plans, or
22 specifications, ^{or ~~other~~ services} for ~~said~~ ^{the} improvement, the prime contractor and the owner shall so
23 advise the person making the inquiry and shall give the person reasonable
24 opportunity to inspect and examine the contract and bond.

25 **SECTION 26.** 779.036 (1) of the statutes is amended to read:

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779.036 (1) In any case in which an improvement is constructed or to be constructed pursuant to a contract and payment bond under s. 779.035, any person furnishing labor, ~~or materials, or plans, or specifications~~ ^{or other services} to be used or consumed in making the improvement, to any prime contractor or subcontractor shall have a lien on the money or other payment due or to become due the prime contractor or subcontractor therefor, if the lienor, before payment is made to the prime contractor or subcontractor, ~~gives~~ serves a written notice of the lienor's claim ~~by registered mail with return receipt requested to~~ on the owner or authorized agent and ~~to~~ on any mortgage lender furnishing funds for the construction of the improvement. Upon receipt of the notice, the owner and lender shall assure that a sufficient amount is withheld to pay the claim and, when it is admitted by the prime contractor or subcontractor involved or established under sub. (3), ^{or not disputed in writing} shall pay the claim and charge it to the prime contractor or subcontractor as appropriate. Any owner or lender violating this duty shall be liable to the claimant for the damages resulting from the violation. There shall be no preference among lienors serving such notices.

SECTION 27. 779.036 (2) of the statutes is amended to read:

779.036 (2) A copy of the notice provided in sub. (1) also shall be served by the lienor, within 7 days after service of the notice upon the owner and lender, upon the prime contractor or subcontractor by registered mail with return receipt requested.

SECTION 28. 779.036 (3) of the statutes is amended to read:

779.036 (3) If the prime contractor or subcontractor does not dispute the claim ~~by serving written notice on the owner and the lien claimant~~ within 30 days after service of written notice under sub. (2), ~~by registered mail with return receipt requested to the owner and lender,~~ the amount claimed shall be paid over to the claimant on demand and charged to the prime contractor or subcontractor pursuant to sub. (1). If the prime contractor or subcontractor disputes the claim, the

as provided
in sub. (1)

or not disputed in writing

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1 right to a lien and to the moneys in question shall be determined in an action brought
2 by the claimant or the prime contractor or subcontractor. If the action is not brought
3 within 3 months from the time the notice required by sub. (1) is served, the lien rights
4 under this section are barred.

5 **SECTION 29.** 779.036 (4) (a) of the statutes is amended to read:

6 779.036 (4) (a) When the total lien claims exceed the sum due the prime
7 contractor or subcontractor concerned and where the prime contractor or
8 subcontractor has not disputed the amounts of the claims filed, the owner with the
9 concurrence of the lender shall determine on a proportional basis who is entitled to
10 the amount being withheld and shall ~~notify~~ serve a written notice of the
11 determination on all claimants and the prime contractor or subcontractor ~~in writing~~
12 ~~of the determination~~. Unless an action is commenced by a claimant or by the prime
13 contractor or subcontractor within 20 days after the mailing service of said notice,
14 the money shall be paid out in accordance with the determination and the liability
15 of the owner and lender to any claimant shall cease.

16 **SECTION 30.** 779.05 (1) of the statutes is amended to read:

17 779.05 (1) Any document signed by a lien claimant or potential claimant and
18 purporting to be a waiver of construction lien rights under this subchapter, ^{le} is valid
19 and binding as a waiver whether or not consideration was paid therefor and whether
20 the document was signed before or after the labor ~~or material~~ was, or materials,
21 plans, ^{or services} specifications, were furnished or contracted for. Any ambiguity in such
22 document shall be construed against the person signing it. Any waiver document
23 shall be deemed to waive all lien rights of the signer for all labor and, materials,
24 plans, ^{and services} and specifications, furnished or to be furnished by the claimant at any time for
25 the improvement to which the waiver relates, except to the extent that the document

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1 specifically and expressly limits the waiver to apply to a particular portion of such
2 labor ~~and~~ materials, ~~plans, and specifications~~, ^{and services.} A lien claimant or potential lien
3 claimant of whom a waiver is requested is entitled to refuse to furnish a waiver
4 unless paid in full for the work ~~or material~~, materials, plans, ~~or specifications~~, ^{or services} to
5 which the waiver relates. A waiver furnished is a waiver of lien rights only, and not
6 of any contract rights of the claimant otherwise existing.

7 **SECTION 31.** 779.06 (1) of the statutes is amended to read:

8 779.06 (1) No lien under s. 779.01 shall exist and no action to enforce a lien
9 under s. 779.01 shall be maintained unless within 6 months from the date the lien
10 claimant furnished the last labor ~~or~~ materials, plans, ~~or specifications~~, ^{or services,} a claim for
11 the lien is filed in the office of the clerk of circuit court of the county in which the lands
12 affected by the lien lie, and unless within 2 years from the date of filing a claim for
13 lien an action is brought and summons and complaint filed. A lien claimant shall
14 serve a copy of the claim for lien on the owner of the property on which the lien is
15 placed within 30 days after filing the claim. A claim for a lien may be filed and
16 entered in the judgment and lien docket, and action brought, notwithstanding the
17 death of the owner of the property affected by the action or of the person with whom
18 the original contract was made, with like effect as if he or she were then living.

19 **SECTION 32.** 779.06 (2) of the statutes is amended to read:

20 779.06 (2) No lien claim may be filed or action brought thereon unless, at least
21 30 days before timely filing of the lien claim, the lien claimant serves on the owner,
22 ~~personally or by registered mail with return receipt requested,~~ a written notice of
23 intent to file a lien claim. The notice is required to be given whether or not the
24 claimant has been required to and has given a previous notice pursuant to s. 779.02.

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1 Such notice shall briefly describe the nature of the claim, its amount and the land
2 and improvement to which it relates.

3 **SECTION 33.** 779.06 (3) of the statutes is amended to read:

4 779.06 (3) Such a claim for lien shall have attached thereto a copy of any notice
5 given in compliance with s. 779.02 and a copy of the notice given in compliance with
6 sub. (2), and shall contain a statement of the contract or demand upon which it is
7 founded, the name of the person against whom the demand is claimed, the name of
8 the claimant and any assignee, the last date of the performance of any labor or the
9 furnishing of any materials, ~~plans, or specifications,~~ ^{or other services,} a legal description of the
10 property against which the lien is claimed, a statement of the amount claimed and
11 all other material facts in relation thereto. Such claim document shall be signed by
12 the claimant or attorney, need not be verified, and in case of action brought, may be
13 amended, as pleadings are.

14 **SECTION 34.** 779.07 (1) (d) of the statutes is amended to read:

15 779.07 (1) (d) Last date of performance of labor or furnishing materials, plans,
16 ~~or specifications,~~ ^{or other services.}

17 **SECTION 35.** 779.08 (1) of the statutes is amended to read:

18 779.08 (1) The person against whom a lien is claimed or any other interested
19 party may file with the clerk of court in whose office the claim for lien is filed an
20 undertaking executed by ~~2 or more sufficient sureties~~ a surety to the effect that the
21 person against whom the lien is claimed shall pay the amount of the claim and all
22 costs and damages which may be awarded against that person on account of the lien
23 or in lieu thereof deposit with the clerk of the court a sum of money, certified check
24 or negotiable government bonds in par value equal to 125% of the claim for lien. The
25 court in which any action to foreclose the lien may be brought shall determine any

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1 question of sufficiency of the sureties surety if exception is taken thereto by the lien
2 claimant within 10 days after notice of the filing of such undertaking or deposit of
3 other security and may upon notice and upon motion of any party, order any sum of
4 money deposited to be invested. The clerk of court shall remove the lien from the
5 judgment and lien docket upon the court's order approving the surety in substitution
6 for the lien. The depositor shall be entitled to any income from the investments,
7 certified check or negotiable U.S. government bonds deposited and the clerk shall
8 pay the income to the depositor without order when received or, in the case of
9 coupons, as the income becomes due.

10 **SECTION 36.** 779.08 (2) of the statutes is amended to read:

11 779.08 (2) If an undertaking is furnished, it shall be accompanied by the
12 affidavits affidavit of the sureties surety in which each states that the surety is
13 worth, over and above all debts and liabilities in property within this state not
14 exempt from execution, an amount in the aggregate equal to 125% or more of the
15 amount of the claim for lien.

16 **SECTION 37.** 779.10 of the statutes is amended to read:

17 **779.10 Judgment.** The judgment shall adjudge the amount due to each
18 claimant who is a party to the action. It shall direct that the interest of the owner
19 in the premises at the commencement of the work or furnishing the ^{labor} materials, plans,
20 specifications, ^{for ~~other~~ services} for which liens are given and which the owner has since acquired,
21 or so much thereof as is necessary, be sold to satisfy the judgment, and that the
22 proceeds be brought into court with the report of sale to abide the order of the court.
23 If the premises can be sold in parcels without injury to the parties, the court may
24 adjudge that the sale be so made. If the plaintiff fails to establish a lien upon the

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1 premises but does establish a right to recover for labor ~~or~~ materials, ~~plans~~, ~~or~~
2 ~~specifications~~, ^{or ~~both~~ services,} the plaintiff may have a judgment against the party liable.

3 SECTION 38. 779.135 (1) of the statutes is amended to read:

4 779.135 (1) Provisions requiring ~~a contractor, subcontractor or material~~
5 ~~supplier~~ any person entitled to a construction lien to waive his or her right to a
6 construction lien or to a claim against a payment bond before he or she has been paid
7 for the labor ~~or~~ materials ~~or both~~, ~~plans~~, ~~or~~ ^{or ~~both~~ services} ~~specifications~~ that he or she furnished.

8 SECTION 39. 779.135 (3) of the statutes is amended to read:

9 779.135 (3) Provisions making a payment to a general prime contractor from
10 any person who does not have a contractual agreement with the subcontractor or
11 supplier a condition precedent to a general prime contractor's payment to a
12 subcontractor or a supplier. This subsection does not prohibit contract provisions
13 that may delay a payment to a subcontractor until the prime contractor receives
14 payment from any person who does not have a contractual agreement with the
15 subcontractor or supplier.

16 SECTION 40. 779.14 (1) (a) of the statutes is amended to read:

17 779.14 (1) (a) Any person who has a direct contractual relationship, expressed
18 or implied, with the prime contractor or with any subcontractor of the prime
19 contractor to perform labor or furnish materials, ~~plans~~, ~~or~~ ^{or ~~both~~ service} ~~specifications~~, except as
20 provided in par. (b).

21 SECTION 41. 779.14 (1) (b) of the statutes is amended to read:

22 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) for
23 highway improvements, any person who has a direct contractual relationship,
24 expressed or implied, with the prime contractor to ~~perform~~ ^{or provide} labor or furnish
25 materials, ~~plans~~, ~~or~~ ^{or} ~~specifications~~, ^{furnish} ~~or services~~.

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SECTION 42

1 **SECTION 42.** 779.14 (1e) (a) of the statutes is amended to read:

2 779.14 (1e) (a) All contracts involving \$10,000 or more for the performance of
3 ~~furnishing labor or furnishing materials, services, plans, or specifications~~, when the
4 same pertains to any public improvement or public work shall contain a provision for
5 the payment by the prime contractor of all claims for labor ~~performed and~~ ^{or services,} materials,
6 ~~plans, or specifications~~ furnished, used or consumed in making the public
7 improvement or performing the public work, ~~including, without limitation because~~
8 ~~of enumeration, fuel, lumber, building materials, machinery, vehicles, tractors,~~
9 ~~equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline,~~
10 ~~motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's~~
11 ~~compensation insurance and contributions for unemployment insurance.~~

12 **SECTION 43.** 779.14 (1e) (b) of the statutes is amended to read:

13 779.14 (1e) (b) All contracts that are in excess of \$30,000, as indexed under sub.
14 (1s), and that are for ~~the performance of labor~~ ^{furnishing} ~~or furnishing materials, services,~~
15 ~~plans, or specifications~~ for a public improvement or public work shall contain a
16 provision under which the prime contractor agrees, to the extent practicable, to
17 maintain a list of all subcontractors and suppliers ^{furnishing} ~~performing labor or furnishing~~
18 ^{services,} ~~materials, plans, or specifications~~ under the contract.

19 **SECTION 44.** 779.14 (1m) (c) (intro.) of the statutes is amended to read:

20 779.14 (1m) (c) *State contracts.* (intro.) The following requirements apply to
21 contracts with the state for ~~the performance of labor or furnishing materials, plans,~~ ^{furnishing} ~~or specifications~~ ^{services,}
22 ~~or specifications~~ for a public improvement or public work:

23 **SECTION 45.** 779.14 (1m) (d) (intro.) of the statutes is amended to read:

24 779.14 (1m) (d) *Local government contracts.* (intro.) The following
25 requirements apply to contracts, other than contracts with the state, for ~~the~~

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1 ~~performance of labor or furnishing~~ ^{furnishing} materials, ^{services,} ~~plans, or specifications~~ for a public
2 improvement or public work:

3 SECTION 46. 779.14 (1m) (e) 2. b. of the statutes is amended to read:

4 779.14 (1m) (e) 2. b. The payment to every person, including every
5 subcontractor or supplier, of all claims that are entitled to payment for labor,
6 ~~performed and~~ ^{services,} materials, ^{used or consumed} ~~plans, or specifications~~ furnished for the purpose of
7 making the public improvement or performing the public work as provided in the
8 contract and sub. (1e) (a).

9 SECTION 47. 779.14 (2) (a) 2. of the statutes is amended to read:

10 779.14 (2) (a) 2. Except as provided in subd. 3., failure of the prime contractor
11 or a subcontractor of the prime contractor to comply with a contract, whether express
12 or implied, with a subcontractor ^{service provider} or supplier for the performance of labor or
13 furnishing of materials, ~~plans, or specifications~~ ^{or services} for the purpose of making the public
14 improvement or performing the public work that is the subject of the contract with
15 the governmental entity.

16 SECTION 48. 779.14 (2) (a) 3. of the statutes is amended to read:

17 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) for
18 highway improvements, failure of the prime contractor to comply with a contract,
19 whether express or implied, with a subcontractor ^{service provider} or supplier of the prime contractor
20 for the performance of labor or furnishing of materials, ~~plans, or specifications~~ ^{or services} for the
21 purpose of making the highway improvement that is the subject of the contract with
22 the governmental entity.

23 SECTION 49. 779.14 (2) (am) 1. of the statutes is amended to read:

24 779.14 (2) (am) 1. Except as provided in subd. 2., a subcontractor ^{service provider} or supplier
25 may maintain an action under par. (a) only if ^{that person} ~~the subcontractor or supplier~~ has

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1 ~~notified~~ served a written notice on the prime contractor in writing that the
2 subcontractor, ^{service provider,} or supplier has provided or will provide labor ~~or~~ materials, ~~plans,~~ ^{or services}
3 specifications, to the public work or improvement. The notice must be provided ^{service provider}
4 served no later than 60 days after the date on which the subcontractor, or supplier
5 first provided the labor ~~or~~ materials, ~~plans,~~ ^{or services} ~~or specifications,~~ ^{or services}.

6 SECTION 50. 779.14 (2) (am) 2. a. of the statutes is amended to read:

7 779.14 (2) (am) 2. a. The contract for the provision of the labor ~~or~~ materials,
8 ~~plans,~~ ^{or services} ~~or specifications,~~ does not exceed \$5,000.

9 SECTION 51. 779.14 (3) of the statutes is amended to read:

10 779.14 (3) ACTIONS BY A COUNTY. In an action by a county upon the bond all
11 persons for whose protection it was given and who make claim thereunder may be
12 joined in the action. The county highway commissioner may take assignments of all
13 demands and claims for labor ~~or material,~~ materials, ~~plans,~~ ^{or services} ~~or specifications,~~ and
14 enforce the same in the action for the benefit of the assignors, and the judgment may
15 provide the manner in which the assignors shall be paid.

16 SECTION 52. 779.15 (title) of the statutes is amended to read:

17 779.15 (title) **Public improvements; lien on money, bonds, or warrants**
18 **due the prime contractor; duty of officials.**

19 SECTION 53. 779.15 (1) of the statutes is amended to read:

20 779.15 (1) Any person furnishing who performs any work or service, or
21 procures the performance of, manages, supervises, or administers such work or
22 service or furnishes any labor ~~or~~ materials, plans, or specifications to be used or
23 consumed in making public improvements or performing public work, ~~including fuel,~~
24 ~~lumber, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools,~~
25 ~~appliances, supplies, electrical energy, gasoline, motor oil, lubricating oil, greases,~~

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1 ~~state imposed taxes, premiums for worker's compensation insurance and~~
2 ~~contributions for unemployment insurance,~~ to any prime contractor, except in cities
3 of the 1st class, shall have a lien on the money or bonds or warrants due or to become
4 due the prime contractor therefor, if the lienor, before payment is made to the prime
5 contractor, ~~gives~~ serves a written notice ~~to~~ of the claim on the debtor state, county,
6 town, or municipality ~~of the claim~~. The debtor shall withhold a sufficient amount to
7 pay the claim and, when it is admitted by the prime contractor or established under
8 sub. (3), shall pay the claim and charge it to the prime contractor. Any officer
9 violating the duty hereby imposed shall be liable on his or her official bond to the
10 claimant for the damages resulting from the violation. There shall be no preference
11 between the lienors serving the notices.

12 **SECTION 54.** 779.15 (2) of the statutes is amended to read:

13 779.15 (2) Service of the notice under sub. (1) shall be made ~~by registered mail~~
14 upon the clerk of the municipality or in the clerk's absence upon the treasurer. If any
15 of the money due the prime contractor is payable by the state, service of the notice
16 under sub. (1) shall be served ~~by registered mail~~ upon the state department, board,
17 or commission having jurisdiction over the work. A copy of the notice shall be served
18 concurrently ~~by registered mail~~ upon the prime contractor.

19 **SECTION 55.** 779.15 (3) of the statutes is amended to read:

20 779.15 (3) If a valid lien exists under sub. (1) and the prime contractor does not
21 dispute the claim within 30 days after service on the prime contractor of the notice
22 provided in sub. (2), by serving written notice ~~to~~ on the debtor state, county, town,
23 or municipality and the lien claimant, the amount claimed shall be paid over to the
24 claimant on demand and charged to the prime contractor pursuant to sub. (1). If the
25 prime contractor disputes the claim, the right to a lien and to the moneys in question

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1 shall be determined in an action brought by the claimant or the prime contractor.
2 If the action is not brought within 3 months from the time the notice required by sub.
3 (1) is served, and notice of bringing the action filed with the officer with whom the
4 claim is filed, the lien rights are barred.

5 **SECTION 56.** 779.15 (4) (a) of the statutes is amended to read:

6 779.15 (4) (a) When the total of the lien claims exceeds the sum due the prime
7 contractor and where the prime contractor has not disputed the amounts of the
8 claims filed, the debtor state, county, town or municipality, through the officer, board,
9 department or commission with whom the claims are filed, shall determine on a
10 proportional basis who is entitled to the money and shall notify all claimants and the
11 prime contractor in writing of the determination. Unless an action is commenced by
12 a claimant or by the prime contractor within 20 days after the mailing of the notice,
13 the money shall be paid out in accordance with the determination and the liability
14 of the state, county, town or municipality to any lien claimant shall cease.

15 **SECTION 57.** 779.155 (2) of the statutes is amended to read:

16 779.155 (2) CERTIFIED COPIES OF JUDGMENTS FILED. In this section,
17 "municipality" includes city, village, county, town, school district, technical college
18 district and any quasi municipal corporation. When the state or any municipality
19 is indebted to any prime contractor, the owner of a judgment against the prime
20 contractor may attach the debt by filing a certified copy of his or her judgment in the
21 manner and subject to the conditions and limitations of this section. If the debt is
22 owed by the state upon a contract for public improvements, the certified copy shall
23 be filed with the officer, board, department or commission having jurisdiction over
24 the work. Otherwise, the copy shall be filed with the department of administration.
25 If the debt is owed by a municipality, the copy shall be filed with the municipal clerk

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1 or corresponding officer. The judgment creditor shall promptly notify the judgment
2 debtor of the filing, within the time and as provided by s. 812.07 for service upon the
3 defendant.

4 **SECTION 58.** 779.155 (3) of the statutes is amended to read:

5 779.155 (3) PAYMENT TO JUDGMENT CREDITOR; EXCEPTION. Except as to prime
6 contractors on public works, the proper officers of the state or municipality shall pay
7 the judgment out of moneys due ~~the prime contractor~~ or which become due the *prime*
8 contractor, but no payment shall be made until 30 days after the creditor has filed
9 with such officers proof that the contractor had been notified of the filing of a copy
10 of the judgment against the contractor.

11 **SECTION 59.** 779.155 (4) of the statutes is amended to read:

12 779.155 (4) SAME; FUNDS DUE PUBLIC PRIME CONTRACTORS. When the state or a
13 municipality is indebted to a ~~prime contractor~~ *person* for public improvements, payment
14 shall not be made to the judgment creditor until 3 months after final completion and
15 acceptance of the public work and then only out of moneys due the prime contractor
16 in excess of unpaid lienable claims having priority under s. 779.15.

17 **SECTION 60.** 779.155 (5) (a) of the statutes is amended to read:

18 779.155 (5) (a) For the purpose of administering this section, sworn statements
19 of the prime contractor setting forth the unpaid lien claims that have been or may
20 be filed under s. 779.15 may be accepted by the proper officer, board, department, or
21 commission, unless the judgment creditor or other interested person gives written
22 notice that an action is pending to determine whether specified lien claims were
23 incurred in performing the public work and the amount thereof, or to determine
24 priorities in which event payments shall await the result of the action.

25 **SECTION 61.** 779.155 (5) (b) of the statutes is amended to read:

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SECTION 61

1 779.155 (5) (b) Within 10 days after filing the certified copy of the judgment
2 under sub. (2), the prime contractor shall file the sworn statement in duplicate, with
3 the proper officer, board, department or commission, who shall immediately furnish
4 the judgment creditor with one of the statements. The judgment creditor shall have
5 10 days from the receipt thereof in which to serve the notice of pendency of the court
6 action.

7 **SECTION 62.** 779.155 (6) of the statutes is amended to read:

8 779.155 (6) PAYMENTS TO JUDGMENT CREDITOR. After the expiration of the
9 3-month period, the moneys due the prime contractor in excess of unpaid lienable
10 expenses and claims incurred in performing the public work shall be paid to the
11 judgment creditor, but not exceeding the amount due on the judgment.

12 **SECTION 63.** 779.155 (7) of the statutes is amended to read:

13 779.155 (7) PRIORITY OF JUDGMENTS OVER ASSIGNMENTS. Any judgment filed
14 under this section has priority over an assignment made by the prime contractor
15 after the commencement of the action in which the judgment was obtained.

16 **SECTION 64.** 779.16 of the statutes is amended to read:

17 **779.16 Theft by contractors.** All moneys, bonds or warrants paid or to
18 become due to any prime contractor ^{service provider or supplier} or subcontractor for public improvements are a
19 trust fund only in the hands of the prime contractor ^{service provider or supplier} or subcontractor ^{to the amount}
20 of all claims due or to become due or owing from the prime contractor or subcontractor ^{service provider}
21 for labor, materials, plans, and specifications ^{and services} used for the improvements, until all the
22 claims have been paid, and shall not be a trust fund in the hands of any other person.
23 The use of the any such moneys by the any prime contractor ^{service provider or supplier} or subcontractor ^{or supplier} for any
24 other purpose other than the payment of claims on such public improvement, before
25 the until all claims have been satisfied, constitutes, except those which are the

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1 subject of a bona fide dispute and then only to the extent of the amount actually in
2 dispute, have been paid in full or proportionally in cases of a deficiency, is theft by
3 the ~~prime contractor or subcontractor~~ ^{person} of moneys so misappropriated and is
4 punishable under s. 943.20. This If the ~~prime contractor or subcontractor~~ ^{person service provider} is a
5 corporation, limited liability company, or other legal entity other than a sole
6 proprietorship, such misappropriation also shall be deemed theft by any officers,
7 directors, members, partners, or agents responsible for the misappropriation. Any
8 of such misappropriated moneys which have been received as salary, dividend, loan
9 repayment, capital distribution or otherwise by any shareholder, member, or partner
10 not responsible for the misappropriation shall be a civil liability of that person and
11 may be recovered and restored to the trust fund specified in this subsection by action
12 brought by any interested party for that purpose. Except as provided in this
13 subsection, this section shall not create a civil cause of action against any person
14 other than the prime contractor ^{service provider or supplier} or subcontractor to whom such moneys are paid or
15 become due. Until all claims are paid in full, have matured by notice and filing or
16 have expired, such money, bonds and warrants shall not be subject to garnishment,
17 execution, levy or attachment.

18 **SECTION 65.** 779.17 of the statutes is amended to read:

19 **779.17 Release of funds on filing bond.** At any time after the service of a
20 notice of lien claim or filing of judgment or pending the determination of any action
21 commenced thereunder, the prime contractor shall be entitled to the release of any
22 moneys due the prime contractor under the contract upon filing a bond, executed by
23 a surety company duly authorized to transact business in this state, with the public
24 authority having jurisdiction over the work, guaranteeing that the prime contractor
25 will pay any judgment of the court rendered in favor of the lien claimant and all

BILL**SECTION 65**

1 judgments filed. Such bond shall be in an amount sufficient to insure payment of the
2 lien claims and judgments, and shall be approved as to form and amount by the
3 public authority.

4 **SECTION 66. Initial applicability.**

5 (1) This act first applies to improvements that visibly commence on the
6 effective date of this subsection.

7 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2227/2dn
MDK:kjf:rs

October 6, 2005

Well articulated,
Thank you.

This is a frustrating issue for contractors as people often are making just as these sort of liens are being filed and new addresses are not always made available by owners seeking to avoid impossibility of a lien

Sen. Zien:

This version makes the changes you requested. Please note the following:

1. As you requested, I eliminated the "laundry list" of materials in ss. 779.14 (1e) (a) and 779.15 (1). You stated that "this deletion is not intended to be a limitation on what is lienable, but a means of expanding the scope of lienable 'improvements' so that it remains flexible as means and methods of construction grow and develop." From a drafting standpoint, I agree that the deletion accomplishes your intent. By eliminating the "laundry list," the foregoing statutes are intended to apply to **any** material consumed in making an improvement.

2. As you requested, I retained the reference to last-known address in s. 779.02 (2) (b). However, I don't think the retention is necessary. The definition of "serve" or "served" refers to service in the manner described in s. 801.14, and s. 801.14 (2) requires service at the last-known address. If you agree that the reference to last-known address is no longer necessary in s. 779.02 (2) (b), let me know and I will revise the draft.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

I agree that it is redundant as it relates to service per s. 801.14, but there is no similar statute for registered or certified mail or other receipted delivery so it is better to keep it in.

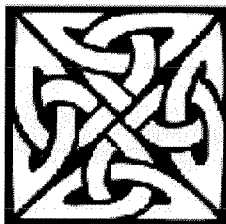
[which may also be used under s. 779.01(2)(e)]

Kunkel, Mark

From: Kim A. Hurtado [KHurtado@Hurtadosc.com]
Sent: Monday, October 24, 2005 11:46 AM
To: Kunkel, Mark
Subject: 2005 Bill - Construction Liens

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Mark --

I dug through all of my records related to possible mods of Ch. 779 and also gave more thought to the issue of how to handle construction managers in light of the recent decision in 1325 North Van Buren, LLC v. T-3 Group, Ltd., et al., which treats construction managers as professionals. You could expand the definition of "Prime Contractor" in 779.01(2)(d)(1.) as follows:

- "1. A person, other than a laborer, but including an architect, **engineer, construction manager**, surveyor or **other service provider**, who enters into a contract with an owner of land who is not personally the prime contractor as defined in subd. 2 to improve the land, or who takes over from a prime contractor the uncompleted contract; or
2. An owner of land who acts personally as **prime** contractor in improving such land."

(Note the change to sub. 2. is to correct the "general contractor" concept consistent with the use of the defined term "prime contractor" referenced in sub. 1.)

10/24/2005

My suggestion for dealing with the laundry list of "labor, materials, services, plans and specifications" sprinkled throughout the documents would be to expand the definition of "improvement" in 779.01(2)(a):

"'Improve' or 'improvement' includes any building, structure, erection, fixture, demolition, alteration, excavation, filling, grading, tilling, plating, clearing, landscaping, repairing, remodeling, **furnishing of any labor, materials, plans, specifications, and services, or procuring the performance of any of them**, on or to land for its benefit. . . ."

Then, throughout the document, reference would simply be made to "improves the land" -- for example, 779.01(3) would read:

"Any person who **improves** the land, and who complies with s. 779.02, shall have a lien therefor on all interests in the land belonging to its owners. . . ."

779.02(1)(c) would read:

"By any lien claimant **furnishing improvements** where more than 4 family living units are to be provided or added by such work of improvement, if the improvement is wholly residential in character, or in any case where the improvement is partly or wholly non-residential in character."

My brief review indicates such changes could be made to the Bill (in the order they appear in draft 2) at s. 779.01 (3), 779.02(1)(c), 779.02(1)(e), 779.02(2)(a), 779.02(2)(b), 779.035(1), 779.035(2)(b)(1.), 779.035(2)(b)(2.) (a.), 779.035(3), 779.036(1), 779.05(1), 779.06(1), 779.08(3), 779.07(1)(d), 779.10, 779.135(1), 779.14(1)(a)&(b)&(1e) (a), (b)(c), (1m)(d), (1m)(e), (2)(a)(2.)&(3.), (2)(am)(1.)&(2.) (a.), and (3), 779.15(1), 779.16. (Maybe somebody wants to think about renumbers 779.14 while you are at it -- what a mess to cite!)

Your Analysis would similarly be modified to track those changes, as well.

You would still need to reference "service providers" throughout in areas where "subcontractors and suppliers" are listed. (see, e.g., 779.02(2)(c), 779.135(3), .)

Another edits you might want to consider:

s. 59.40(2)(f) change "contractors, subcontractors, suppliers and laborers" to "prime contractors, subcontractors, suppliers, laborers and service providers"

s. 779.01(5) - add "service provider" to the list of persons able to assign or convey a lien to a creditor.

Call if you have questions or need further information.

Kim Hurtado